

FINAL
CITY COUNCIL

CITY OF WICHITA
KANSAS

City Council Meeting
09:00 a.m. March 3, 2009

City Council Chambers
455 North Main

OPENING OF REGULAR MEETING

- Call to Order
- Invocation
- Pledge of Allegiance
- Approve the minutes of the regular meeting on February 24, 2009

AWARDS AND PROCLAMATIONS

- Proclamation:
Women in Construction Week
- Service Awards:
Ronald J. Longar
Larry R. Wilson
- Honorary Citizenship Certificates, Citizens of Orleans, France

I. PUBLIC AGENDA

NOTICE: No action will be taken relative to items on this agenda other than referral for information. Requests to appear will be placed on a "first-come, first-served" basis. This portion of the meeting is limited to thirty minutes and shall be subject to a limitation of five minutes for each presentation with no extension of time permitted. No speaker shall be allowed to appear more frequently than once every fourth meeting. Members of the public desiring to present matters to the Council on the public agenda must submit a request in writing to the office of the city manager prior to twelve noon on the Tuesday preceding the council meeting. Matter pertaining to personnel, litigation and violations of laws and ordinances are excluded from the agenda. Rules of decorum as provided in this code will be observed.

1. Deloris Troutman-Extension for License for Mobile Home Park. (***PULLED PER OCI, KURT SCHROEDER***)

COUNCIL BUSINESS

II. UNFINISHED COUNCIL BUSINESS

1. Repair or Removal of Dangerous and Unsafe Structures, 2001 East 21st Street North. (District I)

RECOMMENDED ACTION: Take appropriate action based on the testimony received at the hearing. Any extension of time granted to repair the structure should be conditioned on the following: (1) Taxes and specials are paid as of March 3, 2009, (2) the structure is maintained secure as of March 3, 2009 and is kept secured during renovation; and (3) the premise is kept clean and free of debris as of March 3, 2009, and is so maintained during renovation.

III. NEW COUNCIL BUSINESS

1. Public Hearing, Request for Resolution of Support for Application for Housing Tax Credits; Starkey Lighthouse Project. (District IV)

RECOMMENDED ACTION: Close the public hearing, adopt the resolution of support for the application for Housing Tax Credits, with waiver of the 20% market-rate unit requirement, subject to all local building and zoning codes, ordinances and any additional design review requirements, and authorize the necessary signatures.

2. Coordination Agreement for Intrust Bank Arena Wayfinding. (District I)

RECOMMENDED ACTION: Approve the Coordination Agreement for Intrust Bank Arena Wayfinding; adopt the Bonding Resolution; and authorize the necessary signatures.

3. Amendments to the Wichita Historic Preservation Ordinance.

RECOMMENDED ACTION: Approve the amendments to the Historic Preservation Ordinance and approve the first reading of the ordinance.

4. Old Cowtown Museum Movement of Heller Cabin. (District VI).

RECOMMENDED ACTION: Approve the relocation of the Heller Cabin to the Visitor Center pathway with the understanding that the Historic Wichita Cowtown Board of Trustees will fund the move at the Historic Wichita Cowtown Board of Trustees expense.

5. Creation of New Chapter 5.36 of the Code of the City of Wichita, Kansas, pertaining to Gambling and Gambling-Related Crimes.

RECOMMENDED ACTION: Approve first reading of the Ordinance.

6. An Ordinance amending Section 5.30.020 of the Code of the City of Wichita, Kansas, pertaining to Emergency Cases.

RECOMMENDED ACTION: Place the ordinance on first reading.

7. Repeal of Section 5.55.010 and Section 5.55.020 of the Code of the City of Wichita, Kansas, pertaining to Molotov Cocktails.

RECOMMENDED ACTION: Place repeal of ordinances of first reading.

8. Settlement of Litigation.

RECOMMENDED ACTION: Authorize acceptance of the final settlement agreement.

9. 47th Street South Improvement, between I-135 and Broadway. (District III)
(PULED PER CITY MANAGER)

10. 2010 Federal Legislative Agenda.

RECOMMENDED ACTION: Approve the 2010 Federal Legislative Program.

COUNCIL BUSINESS SUBMITTED BY CITY AUTHORITIES

PLANNING AGENDA

NOTICE: Public hearing on planning items is conducted by the MAPC under provisions of State law. Adopted policy is that additional hearing on zoning applications will not be conducted by the City Council unless a statement alleging (1) unfair hearing before the MAPC, or (2) alleging new facts or evidence has been filed with the City Clerk by 5p.m. on the Wednesday preceding this meeting. The Council will determine from the written statement whether to return the matter to the MAPC for rehearing.

IV. NON-CONSENT PLANNING AGENDA

1. CON2008-63 – Conditional Use for outdoor vehicle and equipment sales on property zoned LC Limited Commercial (“LC”); generally located on the northwest corner of Hillside Avenue and 1st Street. (District I)

RECOMMENDED ACTION: 1) Concur with the findings of the MAPC and approve the Conditional Use, subject to the recommended conditions, with a simple majority vote; OR 2) Deny the Conditional Use request by making alternative findings, and override the MAPC’s recommendation (it requires a two-third majority vote to override the MAPC’s recommendation); OR 3) Return the case to the MAPC for further consideration with a statement specifying the basis for the Council’s failure to approve or deny the application (simple majority vote required).

V. CONSENT PLANNING AGENDA

1. *VAC2008-39 Request to vacate a portion of a platted street right-of-way; generally located on the west side of West Street and north of Zoo Boulevard. (District VI)

RECOMMENDED ACTION: Approve the Vacation Order and authorize the necessary signatures.

2. *VAC2008-40 Request to vacate a portion of platted complete access control; generally located midway between I-235 and Seneca Street, south of MacArthur Road, on the west side of Gold Street. (District IV)

RECOMMENDED ACTION: Approve the Vacation Order and authorize the necessary signatures.

3. *DED 2009-05-Dedication of Street Right-of-Way and DED 2009-06-Dedication of Access Control south of Harry and the west side of 127th Street East. (District II)

RECOMMENDED ACTION: Accept the Dedications.

HOUSING AGENDA

NOTICE: The City Council is meeting as the governing body of the Housing Authority for consideration and action on the items on this Agenda, pursuant to State law, HUD, and City ordinance. The meeting of the Authority is deemed called to order at the start of this Agenda and adjourned at the conclusion.

Allan Murdock, Housing Member is also seated with the City Council.

VI. NON-CONSENT HOUSING AGENDA

None

VII. CONSENT HOUSING AGENDA

None

AIRPORT AGENDA

NOTICE: The City Council is meeting as the governing body of the Airport for consideration and action on items on this Agenda, pursuant to State law and City ordinance. The meeting of the Authority is deemed called to order at the start of this Agenda and adjourned at the conclusion.

VIII. NON-CONSENT AIRPORT AGENDA

1. Armstrong Shank Advertising Agency Contract - Approve Annual Budget and Extend Contract.

RECOMMENDED ACTION: Approve the expenditure of currently budgeted funds for 2009, and approve extending the contract for one year beyond February 28, 2010.

IX. CONSENT AIRPORT AGENDA

1. *Midfield Road Duct Bank Extensions - Mid-Continent Airport.

RECOMMENDED ACTION: Approve the contract and authorize necessary signatures.

2. *Wichita Mid-Continent Airport Acquisition of 1535 South Yucca Road.

RECOMMENDED ACTION: Approve the purchase agreement and authorize the necessary signatures.

COUNCIL AGENDA

X. COUNCIL MEMBER AGENDA

1. Approval of Travel Expenses for Council Member Sharon Fearey to attend the 2009 Kansas Arts conference in Topeka, Kansas on March 4, 2009.

RECOMMENDED ACTION: Approve the travel expenditure.

XI. COUNCIL MEMBER APPOINTMENTS

- 1.

RECOMMENDED ACTION: Approve the Appointments.

XII. CONSENT AGENDA

1. Report of Board of Bids and Contracts dated March 2, 2009.
 - a. Board of Bids and Contracts (See Attached)

RECOMMENDED ACTION: Receive and file report; approve Contracts;
authorize necessary signatures.

2. Applications for Licenses to Retail Cereal Malt Beverages:

Renewal
Kulwinder Jaswal

2009
Petro America

(Consumption off Premises)
8008 East 21st Street

* General/Restaurant 50% or more gross revenue from sale of food.

RECOMMENDED ACTION: Approve licenses subject to Staff review and approval.

3. Preliminary Estimates:

- a. Preliminary Estimates (See Attached)

RECOMMENDED ACTION: Receive and file.

4. Petitions for Public Improvements:

- a. Street Paving in Smithmoor Addition, west of Greenwich, south of Harry. (District II)

RECOMMENDED ACTION: Approve Petitions; adopt resolutions.

5. Agreements/Contracts:

- a. Supplemental Agreement No. 2 for Landfill Gas Collection System Modifications and Supplemental Storm Water Management System Improvements (\$17,590.00) - SCS Engineers. (District VI)

RECOMMENDED ACTION: Approve Agreements/Contracts; authorize the necessary signatures.

6. Minutes of Advisory Boards/Commissions

Wichita Public Library, January 20, 2009

Wichita Historic Preservation Board, January 12, 2009

RECOMMENDED ACTION: Receive and file.

7. 2008 and 2009 Park Facilities Renovation.

RECOMMENDED ACTION: Approve and amend the Bonding Resolution; authorize initiation of the project; and authorize all necessary signatures.

8. Asset Management Agreement.

RECOMMENDED ACTION: Approve the agreement for hotel asset management services with PKF Consulting and authorize necessary signatures.

9. Bus Advertising Sales and Service Agreement.

RECOMMENDED ACTION: Approve the contract with HMCA and authorize the necessary signatures to execute the contract.

10. Second Reading Ordinances: (First Read February 24, 2009)
 - a. List of Ordinances (See Attached)

RECOMMENDED ACTION: Adopt the Ordinances.

Adjournment

City of Wichita
City Council Meeting
March 3, 2009

TO: Mayor and City Council

SUBJECT: Repair or Removal of Dangerous & Unsafe Structures
2001 East 21st Street North (District I)

INITIATED BY: Office of Central Inspection

AGENDA: Unfinished Business

Recommendations: Take appropriate action based on testimony received during the review hearing.

Background: On October 21, 2008, a report was submitted with respect to the dangerous and unsafe conditions on the property at 2001 East 21st Street North. The Council adopted a resolution providing for a public hearing to be held on the condemnation action at 9:30 a.m., or as soon thereafter, on December 8, 2008.

On December 8, 2008, this property was represented by Mr. Weber, the attorney for the owner. Mr. Weber informed City Council that his client was attempting to obtain the title to the property so they could remove the tanks, make repairs and sell the property. Mr. Weber indicated that his client was very close to finalizing the foreclosure action, and had obtained a bid to tear down the building and clean the site. Mr. Weber requested an extension of 60 or 90 days to finalize foreclosure and/or sale. City Council deferred action against the building for 60 days.

Analysis: Staff inspected the property on February 11, 2009; no repairs had been made, but the property was secure. There were bags of trash, debris and tires scattered about the property. At least one potential buyer of the property has contacted the City.

The 2006 and 2007 taxes are delinquent in the amount of \$32,037.20, which includes specials and interest. The 2008 taxes are due in the amount of \$13,974.61, which includes specials and interest. There is a 2008 special assessment for weed cutting in the amount of \$1,144.75 and a pending special for lot cleanup in the amount of \$1,837.92.

Financial Considerations: Structures condemned as dangerous buildings are demolished with funds from the Office of Central Inspection Special Revenue Fund contractual services budget, as approved annually by the City Council. This budget is supplemented by an annual allocation of federal Community Development Block Grant funds for demolition of structures located within the designated Neighborhood Reinvestment Area. Expenditures for dangerous building condemnation and demolition activities are tracked to ensure that City Council Resolution No. R-95-560, which limits OCI expenditures for non-revenue producing condemnation and housing code enforcement activities to 20% of OCI's total annual budgeted Special Revenue Fund expenditures, is followed. Owners of condemned structures demolished by the City are billed for the contractual costs of demolition, plus an additional \$500 administrative fee. If the property owner fails to pay, these charges are recorded as a special property tax assessment against the property, which may be collected upon subsequent sale or transfer of the property.

Goal Impact: On January 24, 2006 the City Council adopted five (5) goals for the City of Wichita. These include: Provide a Safe and Secure Community, Promote Economic Vitality and Affordable Living, Ensure Efficient Infrastructure, Enhance Quality of Life, and Support a Dynamic Core Area & Vibrant Neighborhoods. This agenda item impacts the goal indicator to Support a Dynamic Core Area

and Vibrant Neighborhoods: Dangerous building condemnation actions, including demolitions, remove blighting and unsafe buildings that are detrimental to Wichita neighborhoods.

Legal Considerations: The owner and owner's representative has been informed of the date and time of the hearing.

Recommendations/Actions: It is recommended that the City Council take appropriate action based on the testimony received at the hearing. Any extension of time granted to repair the structure should be conditioned on the following: (1) Taxes and specials are paid as of March 3, 2009, (2) the structure is maintained secure as of March 3, 2009 and is kept secured during renovation; and (3) the premise is kept clean and free of debris as of March 3, 2009, and is so maintained during renovation.

If any of the above conditions are not met, the Office of Central Inspection will proceed with demolition action and also instruct the City Clerk to have the resolution published once in the official city paper and advise the owners of these findings.

Attachments: None

**City of Wichita
City Council Meeting
March 3, 2009**

TO: Mayor and City Council

SUBJECT: Public Hearing, Request for Resolution of Support for Application for Housing Tax Credits; Starkey Lighthouse Project (District IV)

INITIATED BY: Housing and Community Services Department

AGENDA: New Business

Recommendation: Close the public hearing, adopt the resolution of support for the application for Housing Tax Credits, with waiver of the 20% market-rate unit requirement, subject to all local building and zoning codes, ordinances and any additional design review requirements, and authorize the necessary signatures.

Background: The Housing Tax Credit Program is administered by the Kansas Housing Resources Corporation. Enacted in the Tax Reform Act of 1986, the Housing Tax Credit Program is designed to secure private equity capital for the development of affordable rental housing. The Program can provide as much as 55%-60% of the total development cost, which reduces the amount of debt financing in affordable rental housing developments. This allows lower rents and greater affordability. The State receives a tax credit allocation from the Federal government, and requires developers/owners to obtain a resolution of support from the local government, when submitting applications for financing through the Program.

The City has received a request from Starkey, Inc., (Starkey) for a City Council resolution of support for an application for Housing Tax Credits in connection with the development of the Starkey Lighthouse Project, which involves the construction of three single-family homes at the northeast corner of West Douglas and North Clara.

Under the City's adopted Housing Tax Credit policy, developers/owners must present proposed Housing Tax Credit projects to the applicable District Advisory Board (DAB). The policy also requires a review by the City's Development Coordinating Committee (DCC). The Planning Department and the Office of Central Inspection (OCI) also review the project for zoning and design appropriateness and provide comment regarding consistency with neighborhood plans, if applicable. Once the project is reviewed by the DAB, DCC, Planning and OCI, it is forwarded to the City Council for a public hearing, with a staff recommendation regarding the resolution of support for the Housing Tax Credit application.

Analysis: The project proposed by Starkey involves construction of three five-bedroom, single-family homes at the corner of West Douglas and North Clara, specifically, 118 N. Clara, 4950 W. Douglas, and 4930 W. Douglas. The homes will be designed so that each of them will house five income-qualified residents with intellectual disabilities. The Kansas Department of Social and Rehabilitation Services has licensed Starkey to provide non-medical community based services to the residents. However, the facility will not be licensed by the state and therefore will not require special zoning consideration. Each home will be staffed with one Community Living Trainer (CLT) during the first shift time frame, three CLTs during the second shift, and two CLTs during the third shift. Preliminary tax credit rent amounts are estimated to be \$320 per resident, including utilities.

Amenities will include landscaping around each structure, walking paths, benches, and a gazebo. As reflected in the site plan, a shared driveway system will connect the three structures, and parking will be made available. The City's HTC Policy requires a set-aside of 20% of the units for market-rate tenants. Starkey is seeking a waiver of this requirement, as the three homes will serve only those individuals with disabilities, a special needs population. The City's policy provides for a waiver of the market-rate unit requirement when HTC apartment projects will only serve special needs populations. Thus, the project is eligible for the waiver.

The City's Office of Central Inspection (OCI) has reviewed the proposed project. OCI staff members have indicated that the site is appropriately zoned (SF-5) for the proposed project, which falls under "Family" use, and if licensed, as a "Group Home, Limited" use. These uses are allowed "by right" if the property lies within a SF-5 zoning area. It will be necessary for Starkey to complete a boundary line shift in order to fully comply with SF-5 zoning requirements. Although the City's landscape ordinance does not apply to this project, OCI recommends that Starkey follow through on its proposal to save as many existing trees as possible, to provide landscaping as planned, and to add landscape buffers along lot boundary lines abutting other existing residential houses. Elevation drawings reflect the use of appropriate materials and proper roof pitch.

Planning Department staff members have indicated that the project is consistent with the Wichita-Sedgwick County Comprehensive Plan Functional Land Use Map, and that the project would complement the existing land use and development pattern in the immediate area.

Starkey representatives presented the proposed project to a meeting of adjacent property owners on October 29, 2008. The primary concern expressed during the meeting involved saving a tree that provides shade for a neighboring property.

The DCC voted to recommend adoption of the resolution of support and DAB IV voted (10-0) to recommend adoption of the resolution of support, with waiver of the 20% market rate unit requirement.

Housing and Community Services believes that the proposed project will improve the existing site and buildings involved, and will provide safe, clean affordable rental housing for citizens with developmental disabilities. Staff recommends approval of the resolution of support by the City Council, with waiver of the 20% market-rate unit requirement.

The resolution of support will not constitute final plan or design approval. If the project is awarded Housing Tax Credits, the project developer must comply with all requirements associated with appropriate plan reviews required for issuance of a City building permit. These reviews will include compliance with the City of Wichita's Housing Tax Credit Policy design guidelines. Further, the developer must comply with any additional reviews that may be requested by the City Council member in whose district the proposed project is planned.

Financial Considerations: The total project cost is estimated to be \$1,998,275. New construction hard costs are estimated to be \$1,329,529. Financing includes proceeds from the sale of the HTC's, private contributions, cash, and deferred developer fees.

Goal Impact: The proposed project contributes to the City Council goal of Economic Vitality and Affordable Living.

Legal Considerations: The developer has complied with the Housing Tax Credit policy requirements as specified in City Council Resolution No. R 07-584. A resolution document has been approved as to form by the City Law Department.

Recommendations/Actions: It is recommended that the City Council close the public hearing, adopt the resolution of support for the application for Housing Tax Credits, with waiver of the 20% market-rate unit requirement, subject to all local building and zoning codes, ordinances and any additional design review requirements, and authorize the necessary signatures.

Attachments: Resolution document.

RESOLUTION NO. 09-058

A RESOLUTION ESTABLISHING SUPPORT OF THE DEVELOPMENT OF AFFORDABLE HOUSING IN THE CITY OF WICHITA, KANSAS.

WHEREAS, the City of Wichita, Kansas has been informed by Starkey, Inc., that a housing tax credit application will be filed with the Kansas Housing Resources Corporation for the development of affordable rental housing to be located on a site legally described as follows:

Lots 3, 5 & 6, Block "A", Fran Ketta 2nd Addition to Wichita, Sedgwick County, Kansas.

WHEREAS, this housing development will contain three single-family structures, up to five bedrooms in each structure, in order to accommodate 15 residents. Amenities to include landscaping throughout the development area, walking paths, outdoor benches, a gazebo, full-time on-site staff for resident assistance. Said residential development to be reserved for citizens with disabilities.

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF WICHITA, KANSAS:

That the Governing Body of the City of Wichita, Kansas supports and approves the development of the aforesaid housing in our community, subject to city ordinances and the building permit process. This Resolution is effective until March 3, 2010. In the event that any of the characteristics mentioned above should change prior to the issuance of a building permit, this resolution is null and void.

This resolution does not constitute design or plan approval by the City of Wichita. The project design must comply with the City of Wichita's Housing Tax Credit Policy design guidelines, which will be determined by the Metropolitan Area Planning Department and the Office of Central Inspection, after the project is approved for tax credits. During that review, complete building plans may be submitted to the Council Member, at the Council Member's request, prior to issuance of a building permit. All projects must comply with all applicable building codes, zoning codes, ordinances, and requirements.

ADOPTED BY THE GOVERNING BODY OF THE CITY OF WICHITA, this 3rd day of March, 2009.

Carl Brewer, Mayor

ATTEST:

Karen Sublett, City Clerk

Approved as to Form:

Gary E. Rebenstorf, City Attorney

City of Wichita
City Council Meeting
March 3, 2009

TO: Mayor and City Council Members

SUBJECT: Coordination Agreement for Intrust Bank Arena Wayfinding (District I)

INITIATED BY: Metropolitan Area Planning Department

AGENDA: New Business

Recommendation: Approve the agreement and resolution.

Background: Sedgwick County is constructing the Intrust Bank Arena within downtown Wichita at the northeast corner of Waterman and Emporia. The City and County jointly developed and adopted an amendment of *The Wichita-Sedgwick County Comprehensive Plan* entitled *Arena Neighborhood Redevelopment Plan* to guide the redevelopment of downtown Wichita with the arena as a cornerstone project. The *Arena Neighborhood Redevelopment Plan* contains the following recommended implementation action:

Hire a design consultant to help develop, with input from the City's Design Council, a comprehensive set of design criteria, elements and images that will help frame and define a unique, distinctive and attractive identity for the Plan area, with respect to public improvement projects and joint public/private redevelopment initiatives.

Sedgwick County has planned and budgeted not only for the arena itself, but also for the necessary wayfinding improvements that respond to the accessibility of users of the arena. The wayfinding improvements are most effective when designed in coordination with the streetscaping environment in which they are installed. The City will be making future streetscaping improvements in the Arena Neighborhood through implementation of the expansion of the Center City South Tax Increment Financing District approved by the City Council on December 2, 2008. The City and County could pursue the wayfinding and streetscaping designs independently but that would likely result in increased costs and conflicts between the streetscaping and wayfinding improvements.

Analysis: City and County staff have negotiated the attached Coordination Agreement for Intrust Bank Arena Wayfinding in order to implement the recommended implementation action of the *Arena Neighborhood Redevelopment Plan* in a manner that cooperatively addresses both the wayfinding needs of the County and the streetscaping needs of the City. The attached agreement provides that the City and County will each pay one-half the cost of design services for the arena wayfinding improvements and generalized streetscaping design guidelines. The agreement also provides that the County will pay the entire cost of constructing the arena-related wayfinding improvements and that the City will manage the design and construction processes.

Financial Considerations: The estimated design cost is \$150,000. The agreement provides that the City and the County will each fund one-half the cost of the design services, with the total cost to the City not to exceed \$75,000. The City's share of the cost will be funded from the Center City South Tax Increment Financing District.

Goal Impact: The attached agreement addresses the Dynamic Core Area and Vibrant Neighborhoods goal by helping to frame and define a unique, distinctive and attractive identity for the area, with respect to public improvement projects and joint public/private redevelopment initiatives.

Legal Considerations: The agreement and bonding resolution have been reviewed and approved as to form by the Law Department.

Recommendations/Actions: It is recommended that the City Council approve the Coordination Agreement for Intrust Bank Arena Wayfinding, adopt the Bonding Resolution and authorize the necessary signatures.

COORDINATION AGREEMENT INTRUST Bank Arena Wayfinding

THIS AGREEMENT is made and entered into this _____ day of _____, 2009, by and between Sedgwick County, Kansas, hereinafter referred to as "County," and the City of Wichita, Kansas, hereinafter referred to as "City."

WITNESSETH:

WHEREAS, the County and City are authorized to enter into this Agreement pursuant to K.S.A. 12-2908, as amended; and

WHEREAS, the County and City have agreed that a significant aspect of the redevelopment of downtown Wichita is the construction of the INTRUST Bank Arena (hereinafter "the arena"), a modern, first-class, sports and entertainment venue with a 15,000 seat capacity (for basketball) and 20 executive and two party suites designed to provide maximum "fan experience" for all guests; and

WHEREAS, the arena will be owned and operated by the County and located in the center of a revitalizing area of downtown Wichita, the center city of Sedgwick County; and

WHEREAS, the arena will be in an area generally bordered by William on the north, Waterman on the south, the Burlington Northern-Santa Fe tracks on the east, and Emporia on the west; and

WHEREAS, the County and City have adopted the *Arena Neighborhood Redevelopment Plan, November 2007* as an element of *The Wichita-Sedgwick County Comprehensive Plan*; and

WHEREAS, said *Arena Neighborhood Redevelopment Plan* establishes a vision, frameworks, objectives, and strategies for the redevelopment of downtown Wichita in the general vicinity of the arena; and

WHEREAS, said vision, frameworks, objectives, and strategies define a unique, distinctive identity for the Arena Neighborhood; and

WHEREAS, said unique, distinctive identity will be established in part through the design of the wayfinding system and its successful incorporation into the overall streetscaping environment; and

WHEREAS, the County and City desire to formally establish cooperative actions that address wayfinding improvements that respond to the accessibility of users of the arena; and

WHEREAS, the cost of consulting and design services for said cooperative actions are one-half attributable to the County's successful operation of the arena through wayfinding and one-half attributable to the City's downtown redevelopment efforts of establishing a unique, distinctive identity for the Arena Neighborhood through streetscape design;

NOW, THEREFORE, for and in consideration of the parties' mutual promises and covenants, it is agreed in principle as follows:

A. WAYFINDING DESIGN

1. The City and County agree that professional consulting and design services are needed to design modifications of the downtown wayfinding system to support multi-modal connections among the Intrust Bank Arena, the redevelopment planned to occur in the neighborhood surrounding the arena, the rest of downtown, and the greater Wichita community.
2. The City and County agree that the City will request proposals for said professional consulting and design services utilizing a Request for Proposals (hereinafter “RFP”) mutually agreed to by the City and County.
3. The City and County agree that the City will select the consultant team to perform scope of work contained in the RFP utilizing the City’s established selection process and that the City will contract with the selected consultant team and manage the contract for services.
4. The County agrees to reimburse the City one-half the cost of said contract for services, with the total cost to the County not to exceed \$75,000. The final cost of the contract for services will be determined through the City’s standard solicitation process for professional services and will be mutually agreed to by the City and County prior to the City entering into a contract for services.

B. CONSTRUCTION OF WAYFINDING IMPROVEMENTS

1. The City agrees to construct all of the wayfinding improvements for the arena as designed through the contract for services referenced in Section A.3. above.
2. The County agrees to reimburse the City the actual cost of constructing said wayfinding improvements. The final cost of the wayfinding improvements will be determined through the City’s standard solicitation process for construction services and will be mutually agreed to by the City and County prior to the City entering into a contract for construction services.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year first above written.

BOARD OF COUNTY COMMISSIONERS
OF SEDGWICK COUNTY, KANSAS

THE CITY OF WICHITA, KANSAS

KELLY PARKS
Chairman, Fourth District

CARL BREWER
Mayor

ATTEST:

ATTEST:

KELLY B. ARNOLD
County Clerk

KAREN SUBLETT
City Clerk

APPROVED AS TO FORM:

APPROVED AS TO FORM:

ROBERT W. PARNACOTT
Assistant County Counselor

GARY E. REBENSTORF
City Attorney

First Published in the Wichita Eagle on March 6, 2009

RESOLUTION NO. 09-063

A RESOLUTION AUTHORIZING THE ISSUANCE OF BONDS BY THE CITY OF WICHITA AT LARGE TO INSTALL INTRUST BANK ARENA WAY FINDING SIGNS (472-84799).

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF WICHITA, KANSAS;

SECTION 1: That the City of Wichita finds it necessary to make certain related improvements as follows:

The design of way finding signs for the Intrust Bank Arena.

SECTION 2: The total cost is estimated not to exceed \$150,000, exclusive of the costs of interest on borrowed money, with \$75,000 paid by the issuance of bonds by the City of Wichita with Tax Increment Financing and \$75,000 paid by Sedgwick County.

SECTION 3: That the advisability of said improvements is established as authorized by K.S.A. 13-1024c and City of Wichita Charter Ordinance No. 156.

SECTION 4: That this resolution shall take effect and be in force from and after its passage and publication once in the official city paper.

PASSED by the governing body of the City of Wichita, Kansas, this 3rd day of March, 2009.

CARL BREWER, MAYOR

ATTEST:

KAREN SUBLETT, CITY CLERK

(SEAL)

APPROVED AS TO FORM:

GARY REBENSTORF, DIRECTOR OF LAW

Agenda Item No. III-3.

**City of Wichita
City Council Meeting
March 3, 2009**

TO: Mayor and City Council Members

SUBJECT: Amendments to the Wichita Historic Preservation Ordinance

INITIATED BY: Metropolitan Area Planning Department

AGENDA ACTION: New Business

Historic Preservation Board Recommendation: Approve the draft and place the ordinance on first reading (4-0).

Staff Recommendation: Place the ordinance on first reading.

Background: The Wichita Historic Preservation Board initiated review of the Historic Preservation Ordinance with input from Wichita Downtown Development Corporation and Wichita Area Realtors. Staff has developed ordinance amendments that clarify the definitions and duties of the Historic Preservation Board as they relate to properties and procedures for Wichita Historic Register properties and districts. The Historic Preservation Board duties and procedures as a Certified Local Government (CLG) have been added.

Analysis: Proposed ordinance amendments were presented at the January 27, 2009, City Council Workshop. The following changes and additions were presented at that time and are reflected in the proposed amendments.

1. Definitions: Added, revised, or expanded the definitions to assist the user in understanding the preservation ordinance and its applications, including replacement of “historic landmark” and “historic landmark district” throughout with “Wichita Register Property” or “Wichita Register Historic District”.
2. Historic Preservation Board Function: Incorporated the ten “Secretary of Interior’s Standards for Rehabilitation” into the ordinance; identified by name the design guidelines adopted by City Council; clarified items on which the Historic Preservation Board provides comments; added provision to review determinations by Superintendent of Office of Central Inspection of dangerous or unsafe buildings that are Wichita Register Historic Properties or buildings within a Wichita Register Historic District; added provision to act as a Certified Local Government in accordance with K.S.A. 75-2724, *et seq.*, for the purposes of environs review of projects within 500 feet of a property or district listed on the state or national register.

3. Procedure for listing historic resources and districts on a historic register: Requires submission of application 15 days before the hearing date; notice of hearing to be posted by sign not less than 10 days before the scheduled Historic Preservation Board hearing.
4. Certificate of Appropriateness reviews as required under Wichita Municipal Code (applies to only to properties listed on Wichita Register of Historic Places): Requires submission of application 15 days before the hearing date; requires a sign be posted on the property not less than 10 days prior to the hearing; sets a time limit of one year to complete project.
5. Demolition, moving, damage, or destruction of historic features on properties listed on the Wichita Register: Requires bond for demolition (10 % of project cost) and completion date of demolition within 90 days; failure to complete results in forfeiture of bond; order to complete will be issued by Superintendent of OCI if project is abandoned.
6. Economic Hardship: Certificate of Economic Hardship provides relief from Code; new section sets forth procedure for determination of hardship.
7. CLG review as required under Kansas Statute (applies only to Major cases for properties listed on state and national registers or properties within such environs): Requires submission of application 15 days before the hearing date; requires public notice of hearing by posting of sign 10 days before the HPB hearing; sign to remain until after the hearing.
8. Penalty: Stipulates it is unlawful for owner of Wichita Register Historic Property to fail to maintain the property in good condition, and sets a penalty of up to \$500 per day for each day the offense occurs; this amount is comparable to Office of Central Inspection fines.

Financial Considerations: None.

Goal Impact: Core Area and neighborhoods. Promote economic vitality and affordable living.

Legal Considerations: The amendment has been prepared and approved as to form by the Law Department.

Recommendations/Actions: Approve the amendments to the Historic Preservation Ordinance and approve the first reading of the ordinance.

First Published in The Wichita Eagle on March 13, 2009

02/10/09

ORDINANCE NO. 48-201

AN ORDINANCE AMENDING SECTIONS 2.12.1015, 2.12.1016, 2.12.1018, 2.12.1019, 2.12.1019.1, 2.12.1020, 2.12.1021, 2.12.1021.1, 2.12.1022, 2.12.1023, 2.12.1024, 2.12.1024.2 AND 2.12.1025 AND CREATING SECTIONS 2.12.1024.3 AND 2.12.1024.5 OF THE CODE OF THE CITY OF WICHITA, KANSAS, PERTAINING TO THE HISTORIC PRESERVATION BOARD, AND REPEALING THE ORIGINALS OF SECTIONS 2.12.1015, 2.12.1016, 2.12.1018, 2.12.1019, 2.12.1019.1, 2.12.1019.2, 2.12.1020, 2.12.1021, 2.12.1021.1, 2.12.1022, 2.12.1023, 2.12.1024, 2.12.1024.2 AND 2.12.1025 OF THE CODE OF THE CITY OF WICHITA, KANSAS.

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS:

SECTION 1. Section 2.12.1015 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

"Historic Preservation Board--General provisions. Established.

There is created and established a board to be known as the 'Historic Preservation Board' of the city.

(a) **Scope of Duties.** The duties of the board are to advise the City Council on city-owned historic resources and to safeguard the architectural and cultural heritage of the city through the preservation of historic resources. The board may carry out these duties through the identification, documentation and designation of the city's historic resources; administration of city ordinances governing the designation, alteration, and removal of historic resources and Wichita Register Historic Properties; assistance with educational programs,

economic development and tourism; and coordination of public and private historic preservation activities.

(b) **Members.** The board shall be composed of seven members to be appointed by the mayor with the approval of the City Council. The membership of the board shall be composed of members, who shall have demonstrated special interest, knowledge, or training, in fields closely related to historic preservation. A minimum of three members shall be preservation related professionals, who have experience in such fields as architecture, history, conservation, curation, engineering, cultural anthropology, landscape architecture, architectural history, planning, archaeology, urban design, geography, real estate, law, finance, building trades or related areas.

(c) **Terms.** The terms of office shall be as set forth in subsection (1) of Section 2.12.020.

(d) **Officers.** Annually, the board shall elect a president and two vice-presidents from its members. In the president's absence, one of the vice-presidents shall conduct the meeting.

(e) **Meetings.** The board shall meet at least once each month, with additional meetings upon call by the president or upon petition of a simple majority of the members. Four members present shall constitute a quorum, and issues shall be decided by a simple majority vote of the members present. The minutes of each meeting shall be filed in the office of the city clerk. A copy of the minutes of each meeting shall also be filed with the State Historic Preservation Office. All meetings of the board shall be open to the public.

(f) **Ex Officio Members.** A representative from the Office of Central Inspection, a representative of the Metropolitan Area Planning Department, a representative of the planning commission, the library historian, the city archaeologist and the historical museum director shall sit on the board as ex officio members. None of the ex officio members shall be allowed to vote, but shall assist the board in its various functions.

(g) **Committees and Subcommittees.** The board may establish through its bylaws, a design review committee and such additional committees or subcommittees as necessary or convenient to carry out the various functions and duties of the board. Such committees or subcommittees may be made up of no more than three voting members of the board and may include members outside the Historic Preservation Board. Committees may meet upon such schedule and for such purposes as established by the board.

(h) **Staff of the Board.** The board shall receive staff support as directed by the City Manager. The Director of Planning or a designee shall serve as secretary to keep minutes of all meetings, handle correspondence, and perform such other duties as the board may direct.

(i) **Succeeded Powers of Historic Wichita Board.** The City Council shall succeed to all powers and authority previously placed in the Historic Wichita Board except as may be placed in the Historic Preservation Board by this code. Further, the board shall exercise the powers and duties of the Historic Wichita Board over city cemetery property unless and until the effective date of a certain charter ordinance providing that the city council shall become the board of directors and trustees of such cemetery property.”

SECTION 2. Section 2.12.1016 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

"Definitions. As used in this chapter, the following words, terms and phrases shall have the meanings set out below:

‘Applicant for Certificate of Appropriateness’ shall mean:

- (a) the property owner; or
- (b) an agent or other person acting on behalf of the property owner with the owner’s consent.

‘Applicant for nomination of a Wichita Register Historic Property’ shall mean the person or group who initiates and signs the application to nominate a property or district for listing on the Wichita Register of Historic Places. An applicant may be:

- (i) the property owner, or in the case of an application for a Wichita Register Historic District, owners of a minimum of fifty percent of the property , land or area within the proposed historic district;
- (ii) a majority of the Historic Preservation Board;
- (iii) a majority of the City Council;
- (iv) other, if accompanied by written consent of the property owner.
- (v) Members of the public, if nominating publically owned properties.

‘Area’ means properties near to or adjacent to one another, capable of being described in such a manner that their collective location may be established and boundaries definitely ascertained.

‘Board’ means the Historic Preservation Board of the City of Wichita.

‘Building’ means a structure, such as a house, barn, church, hotel, courthouse, city hall, social hall, commercial structure, library, factory, mill, train depot, theater, school, mausoleum, store or similar construction. The term also may refer to a small group of buildings consisting of a main building and subsidiary buildings which constitute an historically and functionally related unit such as a courthouse and jail, house and barn, mansion and carriage house, church and rectory, and farmhouse and related outbuildings.

‘Certificate of Appropriateness’ means a certificate issued by the Board indicating its approval of plans for the alteration, construction, removal, or demolition of a Wichita Register Historic Property or a building or structure within a Wichita Register Historic District, based primarily on design considerations.

‘Certificate of Economic Hardship’ means a certificate issued by the Board indicating its approval of plans for the alteration, construction, removal, or demolition of a Wichita Register Historic Property or a building or structure within a Wichita Register Historic District, based primarily on economic considerations.

‘Certified Local Government – A program of the National Park Service designated to promote the preservation of prehistoric and historic sites, structures, objects, buildings, and historic districts by establishing a partnership between local government, the State Historic Preservation Officer and the National Park Service. A certified local government carries out the purposes of the National Historic Preservation Act and the Kansas Historic Preservation Act as amended.

‘Character-defining features’ means those physical characteristics and elements that indicate the integrity of design and materials of a Wichita Register Historic Property or a building or structure within a Wichita Register Historic District.

‘Contributing Feature: A significant building, site, structure, or object which adds to the architectural qualities, character-defining features, historic association or archeological values of a Wichita Register Historic Property or Wichita Register Historic District because:

- (a) It was present during the pertinent historic time; or
- (b) It possesses integrity and reflects its significant historic character or is capable of yielding important information about the pertinent historic period.

‘Demolition’ means the partial or complete removal of a building or structure, the components of a building or structure, or the man-made components of the site where the building or structure is located, including walks, driveways, retaining walls, and fences.

‘Demolition by neglect’ means the failure to provide ordinary and necessary maintenance and repair to a Wichita Register Historic Property or a building or structure within a Wichita Register Historic District whether such neglect is willful or not, on purpose or by design, by the owner or any party in possession of such a site, which results in any of the following conditions:

- (1) The deterioration of exterior features so as to create or permit a dangerous or unsafe condition to exist, as defined by Section 18.16.040.

(2) The deterioration of exterior walls, roof, chimneys, doors, windows, porches, steps or trim; the lack of adequate waterproofing; or deterioration of interior features or foundations which will or could result in permanent damage, injury or loss of or to exterior features.

‘Design review committee’ means a committee of no more than three voting members with one alternate which may be appointed by the president when necessary to assist the board in reviewing Certificates of Appropriateness. The design review committee shall work closely and informally with preservation staff to review, report and recommend action to the board regarding Certificate of Appropriateness for all projects which may be assigned to them. The design review committee shall follow the guidelines adopted by the Board for such review. Any denial, recommendation or decision made by the committee shall include an explanation detailing the basis for such decision.

‘Emergency Demolition’ means the demolition of a building or structure which the Superintendent of Central Inspection has determined is unfit for use or human habitation and conditions exist which are dangerous to the health, welfare or safety of the occupants of such structure, the occupants of neighboring structures, dwellings or other residents of the City.

‘Feasible and prudent alternative’ means an alternative solution that can be reasonably accomplished and that is sensible or realistic. Factors that shall be considered when determining whether or not a feasible and prudent alternative exists include, but are not limited to, the following:

- (1) Technical issues;
- (2) Design Issues;

- (3) The project's relationship to the community-wide plan, if any;
- (4) Economic issues; and
- (5) Planning issues or alternatives.

'Historic resource' means a district, site, land, area, building, interior, structure or object, including appurtenances and environmental setting, which has historical, cultural, aesthetic, architectural and/or archaeological significance, or other character-defining features with potential importance or value.

'Historically or Architecturally important feature':__ The quality present in a structure, property or district because it:

- 1. Is associated with an event or events that significantly contributed to the broad patterns of the history or architectural heritage of the city, state or nation;
- 2. Is associated with the life of a person(s) significant to the history of the city, state or nation;
- 3. Embodies distinctive characteristics of a type, design, period or method of construction;
- 4. Represents the work of a master craftsman or possesses high artistic value.
- 5. Exemplifies the cultural, political, economic, social or historic heritage of city, state or nation.
- 6. Contains elements of design, detail, materials, or craftsmanship which represent a significant construction innovation.

7. Is part of or related to a square, park or other distinctive area that was or should be developed or preserved according to a plan based on a historic or architectural motif.

8. Is an established and familiar visual feature of a neighborhood or of the community.

9. Has yielded or is likely to yield archeological or artifacts and/or information.

‘Integrity’ means a property’s original and historic characteristics, construction, elements, qualities, design, architectural features, distinctive style, craftsmanship, composition, color, texture and other visual characteristics.

‘Lot’ means a portion of a subdivision or other parcel of land intended as a unit of ownership and occupied or intended to be occupied by one main structure and accessory structures or a complex of structures, including open spaces and parking. A lot may be more than one lot of record or may be a metes and bounds described tract having its principal frontage upon a street or officially approved place.

‘Non-contributing Feature’: A building, site, structure, interior, or object that does not add to the architectural qualities, character-defining features, historic association, or archeological values of a Wichita Register Historic District or Wichita Register Historic Property because:

- (a) It was not present during the pertinent time; or
- (b) Due to alterations, disturbances, additions, or other changes, it no longer possesses integrity, nor reflects its significant historic

character or is incapable of yielding important information about the pertinent historic period.

‘Object’ means those physical items that have functional, aesthetic, cultural, historical or scientific value and are relatively small in scale and simply constructed. While an object may be, by nature or design, movable, it should be located in a specific setting or environment appropriate to its significant historic use, role or character. Objects include, but are not limited to: sculptures, monuments, street signs, fence posts, hitching posts, mileposts, boundary markers, statuary, and fountains.

‘Owner(s) of Record’ means those individuals, partnerships, firms, corporations, public agencies, or any other legal entity holding title to property but not including legal entities holding mere easements or leasehold interests. (May also be referred to as property owner(s).) Current owner(s) of record are those listed as owners on the records of the register of deeds.

‘Permit’ means a building, demolition, moving, sign, fence, parking lot, roofing, siding, or swimming pool permit which is issued by the Office of Central Inspection.

‘Person’ means any individual, firm, association, organization, partnership, business, trust, corporation, or company.

‘Preservation staff’ means personnel assigned to provide staff services for the Historic Preservation Board.

‘Project Classification.’ For the purpose of the Certificate of Appropriateness, projects involving a Wichita Register Historic Property, or a

building, object or structure within a Wichita Register Historic District shall be classified as major or minor.

(1) Major projects include:

(A) (i) Any undertaking requiring a permit for a Wichita Register Historic Property, unless determined minor by preservation staff and/or the design review committee; or

(ii) Any undertaking requiring a permit on a site, land, area, interior, object, building or structure within a Wichita Register Historic District unless determined minor by preservation staff and/or the design review committee; or

(B) (i) Any demolition permit or moving permit for any building, interior or structure listed as a Wichita Register Historic Property; or

(ii) Any demolition permit or moving permit for any building, interior or structure within a Wichita Register Historic District;

(C) Any project deemed major by the design review committee regarding:

(i) Wichita Register Historic Properties;

(ii) Buildings, site, land, area, interior, object, or structures within a Wichita Register Historic District;

(2) Minor Projects Include: any project requiring a permit that proposes to repair or restore an existing element or feature, or replace an element or material with identical material and design to that which is existing for:

(i) Wichita Register Historic Properties; or

(ii) Buildings, site, land, area, interior, object, or structures within a Wichita Register Historic District;

‘Project’ means any activity requiring a permit which would affect, change, or impact the appearance, integrity of a Wichita Register Historic Property, or a building, site, land, area, interior, object, or structure within a Wichita Register Historic District.

‘State Historic Preservation Officer or SHPO’: The person designated by the Governor of the State of Kansas to administer the State Historic Preservation Program for the purpose of carrying out the provisions of the National Historic Preservation Act of 1966, as amended, and related laws and regulations. The terms State Historic Preservation Office or SHPO may also refer to the staff of the State Historic Preservation Officer.

‘Structure’ means anything constructed or erected, the use of which requires permanent or temporary location on or in the ground, including, but not limited to: buildings, fences, gazebos, signs, billboards and swimming pools.

‘Undesignated Historic Resource’ means those structures or building which have been determined and listed by the City Council by ordinance as having historical, cultural, aesthetic, architectural and/or archaeological significance or other character defining features.

‘Wichita Register Historic District’ means a group of historic resources or properties which are significant as a cohesive unit and contribute to the historical, architectural, archaeological or cultural values of the city, state or nation and which is so designated by the City Council.

‘Wichita Register Historic Property’ means property individually listed on Wichita’s Register of Historic Places by the Board and the City Council according to the procedures and provisions in this Chapter.”

SECTION 3. Section 2.12.1018 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

“Wichita Register Listing. The City Council may designate certain historic resources in the city and define, amend and delineate the boundaries thereof through listing on the Wichita Register of Historic Places. Such listing shall be in addition to any other zoning district designation established in Chapter 28 of this Code. The prefix ‘H’ shall indicate the property's designation.”

SECTION 4. Section 2.12.1019 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

“Same -- Criteria for determination of significance. In making such listing as set forth in Section 2.12.1018 of this Code, the City Council shall consider listing if a building, structure, site, land, area, object, district or interior is at least fifty years old, retains a significant degree of integrity and meets one or more of the following criteria:

(a) Is associated with events that have made a significant contribution to the broad pattern of history of the city, county, state or nation;

(b) Is associated with a significant person or group of persons in the history of the city, county, state or nation;

(c) Embodies distinctive characteristics of a type, period, or method of construction, represents the work of a master builder/architect, possesses high

artistic values, or represents a distinguishable entity whose components may lack individual distinction;

(d) Yields or is likely to yield information important in prehistory or history;

Criteria a, b, c, d shall be justified on the Wichita Register of Historic Places nomination form to be submitted by the applicant.”

SECTION 5. Section 2.12.1019.1 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

“Same -- Historic district designation criteria. The following shall apply to nomination of a Wichita Register Historic District:

(a) The boundaries of such historic districts shall be drawn so as to include all buildings, structures, sites, objects or land areas which meet one or more of the criteria set out herein or which directly affect or relate to such buildings, structures, sites, objects or land areas meeting one or more criteria of this section, provided that at least seventy-five percent of the total structures within the boundaries are of architectural, historical, archaeological, or cultural importance or value as determined by the board.

(b) A Wichita Register of Historic Places inventory nomination form accompanied by the following information is to be submitted to and retained by the Metropolitan Area Planning Department; and is required for establishment of an historic district:

(1) A list of specific historic resources located within the proposed district boundaries and a description of the particular importance or value of each such historic resource, such description to include the following:

(A) Approximate date of construction, and dates of major alterations, if known,

(B) Builder and/or architect, if known,

(C) Architectural style,

(D) Primary building materials,

(E) Current owner of record,

(F) Legal description of each property;

(2) A map showing the boundaries of the proposed historic district and the location of each structure of importance or value identified by a number or letter designation;

(3) Photographs of each building, structure, site, object, interior or land area.

(c) Establishment of an historic district or boundaries thereof shall be subject to the procedure specified in Section 2.12.1021.

(d) Applications to increase the boundaries of an historic district may be made if one or more of the following conditions are met:

(1) When buildings, structures, sites, objects, interiors or land areas of importance or value that are related to such historic district are requested for inclusion;

(2) When facts previously undisclosed to or unknown by the Historic Preservation Board are revealed which indicate that a particular building or site is possessed of special architectural, archaeological, cultural character or economic viability of the district.

(e) Applications to reduce the boundaries of an historic district may be made when one or more of the following conditions have been met:

(1) When it can be shown that a particular building, structure, site, object or land area, has no historic, architectural, archaeological, or cultural character or value to the viability of the district;

(2) When it can be shown that no degradation of the district either physical, historical, architectural, archaeological, or cultural character will result from exclusion of property from the district.”

SECTION 6. Section 2.12.1020 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

“Historic Preservation Board -- Function. The board will have the following functions:

(a) The board shall survey and inventory the historic resources within the city and those which may be eligible for listing on the Wichita Register of Historic Places and shall administer the identification, documentation and designation of such properties, and shall present verification of significance to the Metropolitan Area Planning Commission and the City Council.

(b) Consistent with those criteria set forth in Section 2.12.1019 of the Code of the City of Wichita, the board shall identify criteria to be used in determining whether certain buildings, sites, structures, land areas, districts, and interiors should be designated as Wichita Register Historic Properties or Wichita Register Historic Districts.

(c) The board shall administer Certificate of Appropriateness review for projects regarding Wichita Register Historic Properties, and buildings, sites,

land areas, interiors, objects, or structures within a Wichita Register Historic District according to specified guidelines to determine whether to grant or deny approval of proposed undertakings. The design criteria shall be:

(1) 'The Secretary of Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings' and amendments thereto:

(a) A property shall be used for its historic purpose or be placed in a new use that requires minimal change to the defining characteristics of the building and its site and environment.

(b) The historic character of a property shall be retained and preserved. The removal of historic materials or alteration of features and spaces that characterize a property shall be avoided.

(c) Each property shall be recognized as a physical record of its time, place and use. Changes that create a false sense of historical development, such as adding conjectural features or architectural elements from other buildings, shall not be undertaken.

(d) Most properties change over time; those changes that have acquired historic significance in their own right shall be retained and preserved.

(e) Distinctive features, finishes, and construction techniques or examples of craftsmanship; that characterize a historic property shall be preserved.

(f) Deteriorated historic features shall be repaired rather than replaced. Where the severity of deterioration requires

replacement of a distinctive feature, the new feature shall match the old in design, color, texture, and other visual qualities, and, where possible, materials. Replacement of missing features shall be substantiated by documentary, physical, or pictorial evidence.

(g) Chemical or physical treatments, such as sandblasting, that cause damage to historic materials shall not be used. The surface cleaning of structures, if appropriate, shall be undertaken using the gentlest means possible.

(h) Significant archeological resources affected by a project shall be protected and preserved. If such resources must be disturbed, mitigation measures shall be undertaken.

(i) New additions, exterior alterations, or related new construction shall not destroy historic materials that characterize the property. The new work shall be differentiated from the old and shall be compatible with the massing, size, scale, and architectural features to protect the historic integrity of the property and its environment.

(j) New additions, adjacent or related new construction shall be undertaken in such a manner that if removed in the future, the essential form and integrity of the historic property and its environment would be unimpaired. or

(2) Specific Design Review Guidelines as adopted by the Wichita City Council for the following Wichita Register Historic Districts

and any and all other local historic districts hereafter designated by the City Council:

- (a) East Douglas Avenue;
- (b) Topeka/Emporia Avenue;
- (c) Park Place/Fairview Avenue;
- (d) and Bitting Avenue.

(d) The board shall review and provide comment to the Wichita Area Planning Commission on any proposed zoning change or any publicly funded projects of construction such as street, lighting, paving, sidewalks, etc., excepting maintenance which occurs within a two-hundred foot radius of any Wichita Register Historic Property or Wichita Register Historic District.

(e) The board shall review and comment on projects determined by the city archaeologist to pose a threat to an archaeological site.

(f) The board may suggest sources of funds for preservation and restoration activities and for acquisitions, to include federal, state, municipal, private and foundation sources.

(g) The board may recommend incentives for preservation.

(h) If the board finds that certain buildings, structures, land, areas, or districts cannot be preserved without acquisition, the board may recommend to the city council that the fee or a lesser interest in the property be acquired by gift, or purchase, using funds or facilities available for preservation or restoration.

(i) The board may annually review the status of historic resources and districts and include in the board minutes a report of such review.

(j) The board shall make or cause to be made, a preservation plan with authorization hereby to review and update the preservation plan as needed.

(k) The board may implement a receivership program for facade easement donations for the purpose of historic preservation.

(l) The board may recommend programs and legislation to the city council to encourage historic preservation in the city.

(m) The board shall review all determinations of the Superintendent of Central Inspection, that any Wichita Register Historic Property or any building or structure within a Wichita Register Historic District is dangerous and unsafe pursuant to chapter 18.16 and make any appropriate order regarding the repair or removal of such structure.

(n) The Board shall act as the advisory board to the City to assist the City in carrying out its responsibilities as a Certified Local Government. These responsibilities are outlined in the 'Procedures for Implementation of Certified Local Governments in Kansas' and as provided by the SHPO. The Board shall also carry out the City's responsibilities as outlined in any agreement with the SHPO to undertake reviews pursuant to K.S.A. 75-2724 and amendments thereto.

Environs review is not applicable to Wichita Register Historic Properties or Wichita Register Historic Districts.

(o) The board may review and recommend local incentives which may encourage the listing of historic properties. These may be in the form of tax rebates, permit fee waivers, utility reductions or other means to stimulate interest in historic preservation available only to properties listed on the Wichita Register of Historic Places. Such incentives shall be by agreement between the City, the

property owner and the respective business or utility providing the reduction or rebate.”

SECTION 7. Section 2.12.1021 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

“Procedure for listing of historic resources and historic districts.

An application for listing on the Wichita Register of Historic Places requires the following:

(a) **Nomination:** A Wichita Register of Historic Places nomination form and, for districts, district preservation guidelines as defined in Section 2.12.1021.1, shall be submitted to the Metropolitan Area Planning Department. Nomination forms and guidelines, when required, must be submitted to the planning department not less than thirty (30) days prior to the scheduled meeting of the Historic Preservation Board.

(b) **Notice of Hearing:** The applicant shall place a sign(s) on the property(ies) proposed for designation informing the general public that a public hearing will be held on a specific date concerning the proposed listing. The sign(s) shall be provided by the City, and placed in a location designated by the City. Such signs must be placed and remain in place for a period of not less than ten (10) days preceding the public hearing. The sign may be removed at the conclusion of the public hearing or upon withdrawal of the nomination. Failure to post the sign(s) in accordance with these procedures may result in a delay of the public hearing.

(c) **Hearing:** Upon receipt of such nomination, a hearing, by the Historic Preservation Board will be scheduled either at its regular meeting or at a

special meeting, provided that published notice be given fifteen days prior to the date of such hearing. The owner or owners of any proposed Wichita Register Historical Property or property which is a part of a proposed Wichita Register Historic District shall be mailed written notice at least fifteen days prior to the hearing relating to the designation of such property, the amendment to any designation thereof, or the proposed rescission of any designation or the amendment thereto. The board shall afford a full and fair hearing to all interested persons. The board may solicit expert testimony regarding the historic and architectural importance of the property or district under consideration for designation. All interested persons may appear in person or by representative and present evidence or comment. The board shall make its decision within a reasonable time, preferably at the close of the hearing. In the event a member of the board shall make application, evidence shall be presented in the same manner as all other persons and the board member shall not vote on the matter contained in the application. An affirmative vote of a majority of the members present is required to constitute an approval of any application presented to the board.

(d) After consideration by the board, the applicant shall submit application for designation to the Metropolitan Area Planning Department, division of current plans. The following materials are required as part of the designation application:

- (1) The historic preservation board recommendation;
- (2) Required filing fee, unless submitted by the city council or the historic preservation board;

(3) Legal description and map of the boundaries of the proposed designation;

(4) Completed Wichita Register of Historic Places nomination form;

(5) District preservation guidelines as defined in Section 2.12.1021.1, if applicable;

(6) List of property owner(s) of record.

(e) The nomination for listing on the Wichita Register of Historic Places or designation as a Wichita Register Historic District, shall be placed on the next possible Metropolitan Area Planning Commission meeting agenda for public hearing as provided in this Code to consider the listing. At the conclusion of its hearing, the Metropolitan Area Planning Commission shall set forth in writing its findings as to whether the listing is consistent with adopted plans and shall transmit such findings to the City Council.

(f) After notice and public hearing as required by law in a zoning case under Title 28 of this Code, the City Council may enact by ordinance the historic property or historic district designation. Upon passage of such ordinance, the city clerk shall file a certified copy of the ordinance with the county register of deeds, and provide an affidavit of public notice stating the fact of the designation to the county clerk. A copy of such affidavit shall be sent to the owner or owners of all affected property.

(g) Upon approval of the property or historic district designation, the ordinance listing such property by the City Council, the Metropolitan Area Planning Department shall set out on the official zoning map of the city, a

designation corresponding to the case number and delineation of the property or properties involved. Designation shall not alter the uses permitted by the existing zoning classification or district regulations affecting the property.

(h) When individuals owning more than thirty percent of the land, property or area within a proposed Wichita Register Historic District, object in writing and file with the city clerk or in person at the public hearing before the City Council, a two-thirds majority affirmative vote by the city council is required for approval of the designation.”

SECTION 8. Section 2.12.1021.1 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

“District preservation guidelines. Preservation guidelines for Wichita Register Historic Districts, to be completed by the applicant, are required to be submitted with a nomination application. The district preservation guidelines shall include, but not be limited to the following:

(a) Guidelines for those seeking a Certificate of Appropriateness pursuant to Section 2.12.1023, including, but not limited to, the following:

- (1) Acceptable materials for any construction, additions, remodeling or rehabilitation activities;
- (2) Appropriate architectural character, scale, and detail for any construction, additions, remodeling or rehabilitation activities;
- (3) Acceptable appurtenances to new and existing structures;
- (4) Acceptable textures, and ornamentation;
- (5) Acceptable accessories on new or existing structures;

(6) Such other building regulations which would have impact on either new or existing buildings;

(7) Acceptable standards for changes to noncontributing resources within the district;

(8) Acceptable signage.

(9) Acceptable fences or other enclosures.

(b) Guidelines for public improvements in such districts, including but not limited to: street lighting, street furniture, signs, landscaping, utility facilities such as electric poles and wires, telephone lines, design textures of sidewalks and streets, and such other elements as deemed necessary for enhancement and preservation.”

SECTION 9. Section 2.12.1022 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

“Historic District Designation Administrative Requirements.

The following shall apply:

(a) When the Historic Preservation Board considers an area as a possible Wichita Register Historic District, the board shall, prior to rendering its final recommendations, submit the nomination package including district preservation guidelines to city departments, boards and commissions, and other public agencies directly affected.

(b) In addition, the board shall, prior to rendering its final recommendation, make the district preservation guidelines available upon request to landowners in the proposed historic district.

(c) Board-approved graphics for designated structures within a such district may be prepared and made available to the owners of designated structures.”

SECTION 10. Section 2.12.1023 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

“Certificate of Appropriateness Review for Wichita Register Historic Properties and Wichita Register Historic Districts.

The following procedures/requirements apply to Certificate of Appropriateness review:

(a) A permit for any project affecting a Wichita Register Historic Property, or a building, site, land, area, interior, object, or structure within a Wichita Register Historic District shall not be issued to any applicant by the Office of Central Inspection unless an application for a Certificate of Appropriateness has first been reviewed and approved by either the preservation staff, The Historic Preservation Board and/or the City Council. Projects not requiring a permit, but which propose to alter features which have been defined in a district's preservation guidelines as requiring protection, shall require a Certificate of Appropriateness application. Projects which will or have the potential to damage or destroy historic features of a Wichita Register Historic Property, or any building, site, land, area, interior, object, or structure which is located within a Wichita Register Historic District shall be subject to Certificate of Appropriateness review.

(b) When applying for a Certificate of Appropriateness, the applicant shall provide plans, specifications or other documentation pertaining to the work

as required on board-adopted application forms. A completed Certificate of Appropriateness application and accompanying materials must be submitted to the Metropolitan Area Planning Department. Preservation staff or design review committee will review the application and determine if the proposed work is a major or minor project. Such application must be submitted no less than fifteen (15) days prior to the scheduled meeting of the Historic Preservation Board.

(c) **Notice of Hearing:** For major projects, the applicant shall place a sign(s) on the property(ies) informing the general public that a public hearing will be held on a specific date concerning the proposed alterations of the property. The sign(s) shall be provided by the City, and placed in a location(s) designated by the City. Such sign(s) must be placed on the property(ies) for a period of no less than ten (10) days prior to the Historic Preservation Board meeting.

(d) A Certificate of Appropriateness for a major project shall receive preliminary review by the design review committee or preservation staff. Preservation staff or the committee shall then report and make a recommendation to the board. The board shall review the application and recommend approval, approval with conditions, or denial within thirty days of the receipt of the application. Preservation staff shall notify the applicant of the board's decision and provide a copy to the Office of Central Inspection and the applicant. If an appeal of the board's decision is filed, by the applicant or any interested party, with the preservation staff within seven (7) business days of the board's decision, the Certificate of Appropriateness shall not be issued until the City Council holds a public hearing regarding the application. This public hearing shall be at the next possible City Council meeting.

(e) A Certificate of Appropriateness for a minor project shall be reviewed and approved or denied by the preservation staff. Preservation staff shall notify, in writing, the applicant and the Office of Central Inspection of their decision regarding the project.

(f) If no action has been taken by the preservation staff and/or the board within forty-five (45) days for major projects and within fifteen (15) days for minor projects after the date of receipt by the Metropolitan Area Planning Department of the completed application, the building permit may be applied for with the Office of Central Inspection.

(g) Any applicant or other interested party wishing to appeal a denial or approval with conditions of any Certificate of Appropriateness may appeal to the next higher authority. The order of the appeal procedure shall be: (1) the preservation staff, or the design review committee, (2) the Historic Preservation Board, and (3) the City Council. Such appeal must be filed no later than seven business days from the date of the decision.

(h) No change shall be made in the work defined in the Certificate of Appropriateness without resubmittal and approval thereof in the same manner as provided above. All such work defined in the certificate shall be completed within one year or within such time period specified in the Certificate of Appropriateness. Such period may be extended by the applicant re-submitting the application to the board.

(i) After a decision is reached denying with prejudice an application for Certificate of Appropriateness, a resubmittal of application will not be accepted for an additional hearing within a twelve-month period from the date of

final decision, except upon written request by the applicant indicating any changes in plans and specifications made to the original application. Denial of a Certificate of Appropriateness without prejudice permits reapplication immediately.

(j) In the event the staff assigned to the board certifies to the City Manager that the board and/or its president are unable to process a Certificate of Appropriateness for a major project in a timely fashion (through lack of quorum or otherwise) then the City Council is empowered to act upon written recommendation of the preservation staff without the review procedure set forth above.”

SECTION 11. Section 2.12.1024 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

“Wichita Register Listed Property -- Demolition, moving or damage or destruction of historic features.

(a) If an application is received by the Office of Central Inspection for demolition or moving of any Wichita Register Historic Property, or any building, site, land, area, interior, object, or structure within a Wichita Register Historic District, the applicant shall be referred to the preservation staff for a Certificate of Appropriateness application. Review of such application and required notification for a Certificate of Appropriateness shall be as provided in Section 2.12.1023.

(b) For a project which involves demolition or which will or has the potential to damage or destroy historic features of a Wichita Register Historic Property, or a building, site, land, area, interior, object, or structure within a Wichita Register Historic District, the proponent of such project shall, before

doing any of the demolition or work in furtherance of such project, submit a Certificate of Appropriateness for review as provided for in Section 2.12.1023.

(c) **Bond requirement for demolition.** A bond shall be placed on deposit with the Office of Central Inspection for the purpose of insuring completion of the demolition, or in the case of noncompletion, to insure that funds are available to pay for project completion by the city. Such bond will be in an amount equal to ten percent of the estimated cost of the demolition. Completion of the project by the applicant, with final inspection approval by the Office of Central Inspection will cause the deposit to be returned to the applicant in its entirety. Bond money shall be placed on deposit by the city for the express purpose of holding cash bond/deposit funds.

(d) **Completion date for demolition.** All demolition work shall be completed by the applicant within ninety (90) days of issuance of the Certificate of Appropriateness. When circumstances beyond the certificate holder's control prevent completion of the work, the individual may request an extension, in writing, to the Historic Preservation Board prior to expiration of the permit. Requests for extension must indicate why the extension is required.

(e) Final inspection is to be made by the Office of Central Inspection when all demolition related debris, contaminated soil, paving, concrete, foundations, and utilities have been removed from the property and disposed of properly.

(f) **Failure to complete.** In the event the certificate holder fails to complete the demolition within the time established by the date set by subsection (d), or abandons the project site, the Office of Central Inspection shall inspect the

demolition site to determine the extent of work yet to be completed. The Superintendent of Central Inspection may issue an order to complete, as provided for in subsection (g).

(g) **Order to complete.** An order to complete may be issued by the Superintendent of Central Inspection in the event a demolition project is either abandoned or not completed in the allotted time. This order shall be posted on site and copies sent to owner of record, contractor, and lienholder. For the purpose of this section, lienholder shall include the bonding company and insurer, if any. An order to complete shall be issued in accordance with provisions for unsafe buildings or structures in the Uniform Building Code.

(h) If the order to complete is not complied with within the allotted time, the Superintendent of Central Inspection shall forfeit the bond, the proceeds of such bond shall be paid into the general fund.

(i) The City Council, on appeal of the decision of the Historic Preservation Board, may approve the Certificate of Appropriateness if it determines that feasible and prudent alternatives do not exist to the alteration, demolition or moving of the proposed project. The City Council may deny the Certificate of Appropriateness if it determines that in the interest of preserving historical values, the Wichita Register Historic Property, or building, site, land, area, interior, object, or structure within a Wichita Register Historic District should not be demolished, moved or altered.

(k) In the event of an emergency demolition of a Wichita Register Historic Property, or a building, site, land, area, interior, object, or structure

within a Wichita Register Historic District, Office of Central Inspection staff shall notify the preservation staff as soon as possible.”

SECTION 12. Section 2.12.1024.1 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

Review of demolition and moving permits--Undesignated historic resources. An application to the Office of Central Inspection for a demolition or moving permit shall require notification to preservation staff if the permit is for a undesignated historic resource determined by preservation staff to have potential for listing on the Wichita Register of Historic Places. The following procedure applies:

(a) Demolition and moving permit applications for buildings or structures, whether an individual site or sites within a Wichita Register Historic District so identified in the city's preservation plan, will be reviewed by preservation staff.

(b) Preservation staff may make the determination that a building, site or structure threatened with demolition or removal meets the criteria for designation; or may make the determination that a building, site or structure within a Wichita Register Historic District contributes to that district and that the proposed undertaking will have a detrimental effect on the historic district.

(c) If a building, site or structure is determined to meet criteria for listing by the preservation staff, a written notice shall be sent by certified mail to the owner or owners of such building, site or structure. The notice shall describe the property which meets listing criteria including its location and boundaries, justification of its historic or architectural significance, announcement of the time,

date and place of public hearing by the Historic Preservation Board, and statement of interim controls as provided in subsection (d). The notice shall also be delivered to the Office of Central Insp^ection with acknowledgment of receipt by the Superintendent of Central Inspection required.

(d) Immediate but temporary interim controls, as provided in subsection (e), below, prohibiting any alteration or demolition, other than those alterations permitted by a valid Certificate of Appropriateness may be placed by the preservation planner on any building, site or structure that is identified in the preservation plan and for which a notice of interim control has been mailed, until effective evaluation of the building, site or structure can be made, provided that the interim period does not exceed sixty days. This sixty-day period may be extended by resolution of City Council but in no event may the interim control period exceed one hundred eighty days.

(e) The Office of Central Inspection is prohibited from issuing any permit for any building, site or structure upon which interim control has been placed unless the Superintendent of Central Inspection or his designee certifies to the preservation planner that such permit is necessary due to emergency public safety reasons, or is approved pursuant to a valid certificate of appropriateness.

(f) The Historic Preservation Board shall, in the case of an undesignated historic resource will work with the owner of the property to provide alternatives to demolition, or if demolition is the conclusive alternative, the board shall document or cause to be documented the resource with photographs, and/or measured drawings.

(g) If in the interim period a undesignated historic resource becomes listed on the Wichita Register of Historic Places pursuant to this subsection and Sections 2.12.1019, 2.12.1019.2 and 2.12.1021 and a permit application to demolish or move is sought, the procedure in Section 2.12.1024 shall apply.

SECTION 13. Section 2.12.1024.2 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

“Wichita Register Historic Property -- Demolition by Neglect. In the event of Demolition by Neglect, as defined in Section 2.12.1016, of a Wichita Register Historic Property, or a building, site, land, area, interior, object, or structure within a Wichita Register Historic District on public or private property, the following provisions shall apply:

(a) If a Wichita Register Historic property or a contributing feature within a designated Wichita Register Historic District has been determined by the Historic Preservation Board to be the subject of Demolition by Neglect, the board or staff shall notify the Superintendent of Central Inspection to issue a written notice specifying the conditions of deterioration and the minimum items of repair or maintenance necessary to correct or prevent further deterioration.

(b) Such notice shall be sent by certified mail, return receipt requested, addressed to the owner of the property, or other responsible person, at his or her last known address, or the address shown on the real property tax records in the clerk's office of the county. Such notice, when so addressed and deposited with the postal service with proper postage prepaid, shall be deemed complete and sufficient. In the event that notification cannot be accomplished, as aforesaid,

after reasonable efforts, notice shall be accomplished by posting a public notice on the property.

(c) The notice shall provide:

(1) that corrective action commence no later than thirty days from the receipt or posting of the notice, unless an extension is granted by the Historic Preservation Board or City Council.

(2) The owner shall demonstrate continual progress and all repairs shall be completed within a reasonable period of time.

(3) The owner(s) of record of the subject property, or any person therein, may, within ten days request a hearing before the Historic Preservation Board challenging the finding, of Demolition by Neglect and/or the notice to repair. If such request for a hearing is received within this time period, a hearing will be at the next regular meeting of the Historic Preservation Board.

(d) The board shall review all evidence of Demolition by Neglect at the scheduled hearing. The board shall review the options and procedures set forth in Section 18.16.070 to determine the appropriate action necessary.

(e) In the event that the Historic Preservation Board finds that the actions provided in subsections (a) and (c) of this section would impose a substantial hardship on the owner or any or all persons with any right, title or interest in the subject property, then the board shall establish a period of forty-five (45) days and direct staff to seek alternative methods to preserve the Wichita Register Historic Property and any contributing structure located within the Wichita Register Historic District.

(f) If no alternative is found to preserve the structure without undue hardship to the owner, and the structure is determined a threat to human safety, and is in violation of city code, a demolition permit may be issued.

(g) The provisions of this section shall supersede Sections 20.04.180 and 18.40.180 of this Code when applied to removal and demolition of Wichita Register Historic Properties. Any requirements imposed upon an applicant by the Historic Preservation Board under this section may be appealed to the city council.”

SECTION 14. Section 2.12.1024.3 of the Code of the City of Wichita, Kansas, is created to read as follows:

“Certificate of Economic Hardship. (a) **Purpose.** A Certificate of Economic Hardship serves as an alternative to a Certificate of Appropriateness whenever a Certificate of Appropriateness would otherwise be required. The purpose of the Certificate of Economic Hardship is to provide relief where the application of this code would otherwise impose undue economic hardship.

(b) **Application for Certificate.** (i) An application for a Certificate of Economic Hardship shall be made on a form prepared by preservation staff. Such application may be made in conjunction with, or separately from, an Application for a Certificate of Appropriateness or upon the denial of a Certificate of Appropriateness. The Board shall schedule a public hearing concerning such applications within thirty days.

(ii) The notification and appeal provisions of Section 2.12.1023 shall apply to applications for Certificates of Economic Hardship.

(iii) The board may solicit expert testimony or request that the applicant produce any or all of the following information before it makes a determination on the application:

(A) Estimate of the cost of the proposed construction, alteration, demolition or removal, and an estimate of any additional cost that would be incurred to comply with the recommendations of the board for changes necessary for the issuance of a certificate of appropriateness;

(B) A report from a qualified or bonded person with experience in rehabilitation as to the structural soundness of any structures on the property and their suitability for rehabilitation;

(C) Estimated market value of the property in its current condition; after completion of the proposed construction, alteration, demolition, or removal; after any changes recommended by the board; and, in the case of a proposed demolition, after renovation of the existing property for continued use;

(D) In the case of a proposed demolition, an estimate from an architect, developer, real estate consultant, appraiser, or other real estate professional experienced in rehabilitation as to the economic feasibility of rehabilitation or reuse of the existing structure on the property;

(E) If the property is income-producing, the annual gross income from the property for the previous two years; itemized operating and maintenance expenses for the previous two

years; and depreciation deduction and annual cash flow before and after debt service, if any, during the same period;

(F) Remaining balance on any mortgage or other financing secured by the property and annual debt service, if any, for the previous two years;

(G) All appraisals obtained within the previous two years by the owner or applicant in connection with the purchase, financing, or ownership of the property;

(H) Any listing of the property for sale or rent, price asked and offers received, if any, within the previous two years;

(I) Assessed value of the property according to the two most recent assessments;

(J) Real estate taxes for the previous two years;

(K) Form of ownership or operation of the property, whether sole proprietorship, for-profit or not-for-profit corporation, limited partnership, joint venture, or other;

(L) Any other information considered necessary by the board to a determination as to whether the property does yield or may yield a reasonable return to the owners.

(c) **Determination.** The board shall review all the evidence and information required of an applicant for a Certificate of Economic Hardship and make a determination of whether the denial of the application will deprive the owner of the property or reasonable use of, or reasonable economic return on, the property. Written

notice of the determination shall be provided in the same manner as notification of a determination concerning a Certificate of Appropriateness.”

SECTION 15. Section 2.12.1024.5 of the Code of the City of Wichita, Kansas, is created to read as follows:

“Notice of Hearing of Certified Local Government Review of Applications for State or National Listings and Environs Review of Major Projects.

(a) Nomination forms for listing on the Register of Historic Kansas Places or the National Register of Historic Places must be submitted to the Planning Department not less than fifteen (15) days prior to the scheduled meeting of the Historic Preservation Board. The applicant for listing on the Register of Historic Kansas Places or National Register of Historic Places shall place a sign(s) on the property(ies) proposed for state or national listing informing the general public that a public hearing will be held on a specific date concerning the proposed listing. The sign(s) shall be provided by the City, and placed in a location designated by the City. Such signs must be placed and remain in place for a period of not less than ten (10) days preceding the public hearing. The sign may be removed at the conclusion of the public hearing or upon withdrawal of the nomination. Failure to post the sign(s) in accordance with these procedures may result in a delay of the public hearing.

(b) Application forms for review of projects by the certified local government must be filed with Planning Department not less than fifteen (15) days prior to the scheduled meeting of the Historic Preservation Board. The applicant for major projects occurring within the environs of property listed on the

Register of Historic Kansas Places or the National Register of Historic Places shall place a sign(s) on the property(ies) on which such projects are being proposed, informing the general public that a public hearing will be held on a specific date concerning the proposed listing. The sign(s) shall be provided by the City, and placed in a location designated by the City. Such signs must be placed and remain in place for a period of not less than ten (10) days preceding the public hearing. The sign may be removed at the conclusion of the public hearing and must be removed by the applicant at the end of all proceedings on the application or upon withdrawal of the application. Failure to post the sign(s) in accordance with these procedures may result in a delay of the public hearing.”

SECTION 16. Section 2.12.1025 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

“Same -- Penalty. (a) It is unlawful to construct, reconstruct, structurally alter, remodel, renovate, restore, demolish, deface, move or maintain Wichita Register Historic Property, or a building, site, land, area, interior, object, within a Wichita Register Historic District in violation of the provisions of this chapter.

(b) It is unlawful for any owner or individual in control of a Wichita Register Historic Property or a building, site, land, area, interior, object, or structure within a Wichita Register Historic District to fail to provide reasonable care, appropriate maintenance and upkeep of such property for the protection, preservation, and enhancement of such property.

(c) It is unlawful for any person, owner, individual, firm or corporation to enlarge, alter, convert, demolish or change the use of any property

listed on the Wichita Register Historic Property or a building or structure within a Wichita Register Historic District without first obtaining a building permit or other permit as required by the Code of the City of Wichita.

(d) In addition to other remedies, the City may institute any appropriate action or proceedings to prevent such unlawful construction, restoration, demolition, moving or maintenance to restrain, correct or abate such violation. Any person who violates any provision of the ordinance codified in the sections cited above shall be guilty of a separate offense for each day or portion thereof during which any such violation is committed, continued or permitted, and each offense shall be punishable by a fine of not more than five hundred dollars.”

SECTION 17. The originals of Sections 2.12.1015, 2.12.1016, 2.12.1018, 2.12.1019, 2.12.1019.1, 2.12.1019.1, 2.12.1020, 2.12.1021, 2.12.1021.1, 2.12.1022, 2.12.1023, 2.12.1024, 2.12.1024.2 and 2.12.1025 of the Code of the City of Wichita, Kansas, are hereby repealed.

SECTION 18. This ordinance shall be included in the Code of the City of Wichita, Kansas, and shall be effective upon its passage and publication once in the official city paper.

PASSED by the governing body of the City of Wichita, Kansas, this 13th day of March, 2009.

Carl Brewer, Mayor

ATTEST:

Karen Sublett, City Clerk

Approved as to Form:

Gary E. Rebenstorf, Director of Law

City of Wichita
City Council Meeting
March 3, 2009

TO: Mayor and City Council

SUBJECT: Old Cowtown Museum Movement of Heller Cabin (District VI).

INITIATED BY: Division of Arts & Cultural Services

AGENDA: New Business

Recommendations: Approve the relocation of Heller Cabin at the Old Cowtown Museum which will be financed at a cost of \$30,000 by Historic Wichita Cowtown Board of Trustees from unrestricted funds given to them by the City for building maintenance and through their capital campaign.

Background: The Heller Cabin was built in the 1860s. It was donated to the City of Wichita and moved to Cowtown in 2002 from Dickinson County. At that time, the cabin was located at the farm road to be interpreted as an early farmstead. In 2007, the City of Wichita assumed daily operation and maintenance of the museum facilities and the grounds. The Historic Wichita Cowtown Board of Trustees feels that the cabin could be better utilized in a different location.

Analysis: Moving the Heller Cabin to this location will give visitors a stop along the path from the Visitor's Center to the museum grounds and will set the stage for restoring and interpreting the cabin in an open setting appropriate to its origins. The move to the new location has been cleared by both the state and local preservation offices.

Financial Considerations: The move of the cabin including the construction of a new foundation, protection of the cabin and demolition of the current foundation should cost \$30,000 according to estimates provided by the Board of Trustees. The funds will come from the Heller Cabin accounts totaling \$44,000; a combination of unrestricted funds which includes money given to them by the city for building maintenance and through a capital campaign. The board would like to move the cabin in the spring of 2009 and begin restoration on the center portion of the cabin in the fall of 2009. The complete restoration of the cabin based on preliminary plans and specifications should cost around \$235,000. The side wings restoration portion of the \$235,000 total would be planned and completed in 2011 as Phase II.

Goal Impact: This project will impact "maintaining and optimizing public facilities and assets" by relocating the cabin to a more visitor friendly location which is the first step in the restoration process.

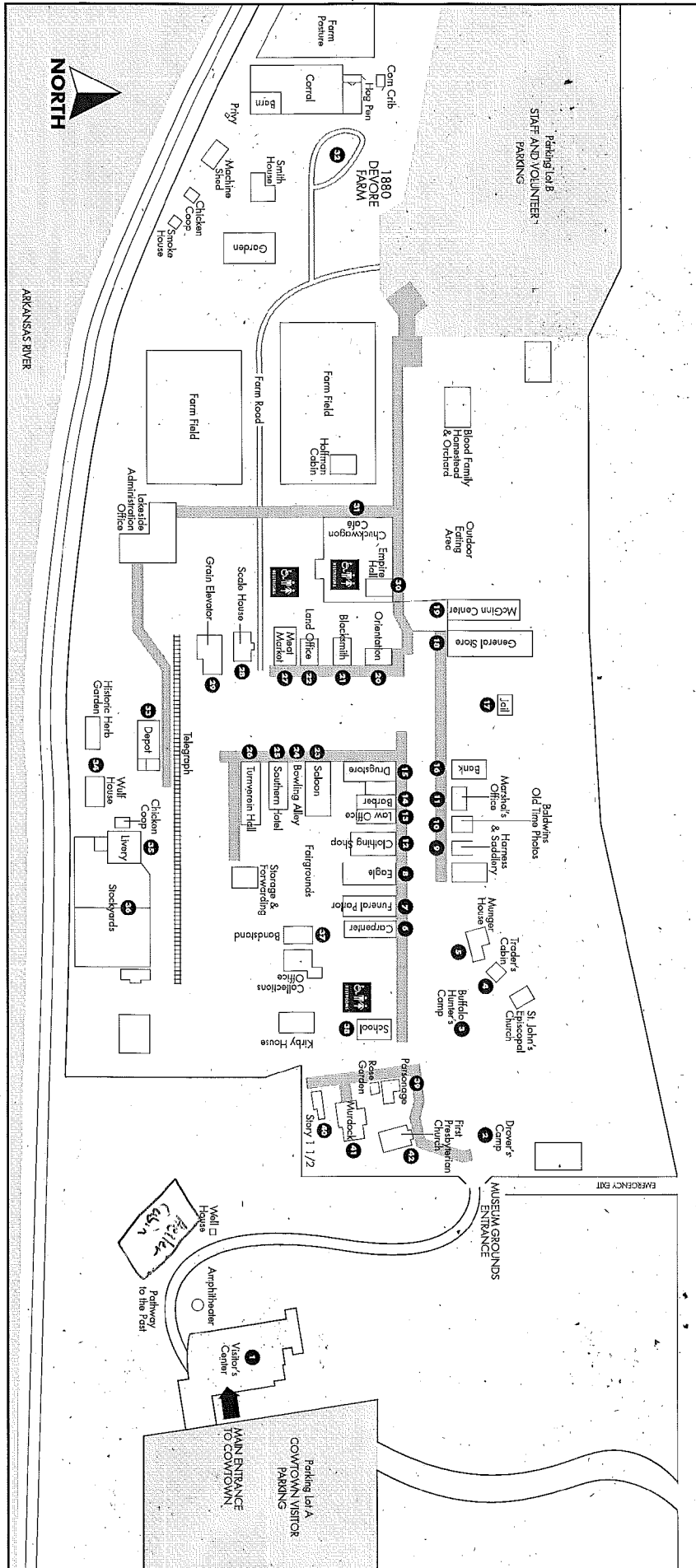
Legal Considerations: Approved to form by Law Department

Recommendation/Actions: It is recommended that the City Council approve the relocation of the Heller Cabin to the Visitor Center pathway with the understanding that the Historic Wichita Cowtown Board of Trustees will fund the move at the Historic Wichita Cowtown Board of Trustees expense.

Attachments: Site Map

OLD TOWN MUSEUM

Wichita, Kansas USA



LEGEND

- | | | | | | |
|--------------------------|----------------------------------|---|----------------------------|---|-------------------------------|
| 1. Visitor's Center | 8. Wichita City Eagle Print Shop | 15. Drugstore, Doctor & Dentist Offices | 22. Land Office | 29. Arkansas Valley Grain Elevator | 36. Stockyards |
| 2. Driver's Camp | 9. Harness & Saddlery | 16. First Arkansas Valley Bank | 23. Fritz Sritzer's Saloon | 30. Empire Hall | 37. Bandstand |
| 3. Buffalo Hunter's Camp | 10. Badwins Old Time Photos | 17. Calaboose (Jail) | 24. Bowling Alley | 31. Chuckwagon Café | 38. OneRoom School |
| 4. Trader's Cabin | 11. City Marshal's Office | 18. General Store | 25. Southern Hotel | 32. Devore Farm | 39. Parsonage |
| 5. Munger House | 12. Fechner Dry Goods & Clothing | 19. McGinn Center | 26. Turnverein Hall | 33. Wichita & Southwestern Railroad Depot | 40. Story 1 1/2 House |
| 6. Carpenter Shop | 13. Law Office | 20. Orientation Building | 27. Meat Market | 34. Wolf House | 41. Murdoch House |
| 7. Funeral Parlor | 14. Bath & Barber Shop | 21. General Blacksmithing | 28. Scale House | 35. Livery Stable | 42. First Presbyterian Church |

HISTORIC PRESERVATION BOARD

C of A NUMBER: HPC2008-00287 Major

APPLICANT/AGENT: Amy Loch, Curator
Old Cowtown Museum
Address: 1701 W Museum Blvd
City/Zip: Wichita, KS 67203

REQUEST: relocate Heller Cabin in proximity to the Visitor's Center

LOCATION: Old Cowtown Museum
1701 W Museum Blvd
Wichita, KS 67203

HISTORIC PROPERTY: Munger House

BOARD ACTION: At the regular scheduled meeting of the Historic Preservation Board held December 8, 2008 at 3:00 p.m. in the Large Committee Room, 10th Floor, City Hall, the following action was taken by a 6-0 vote:

Item #1: found the relocation of the Heller Cabin does not encroach upon, damage or destroy the environs of the National Register listed Munger House per K.S.A. 75-2714-2725.

Any changes made to the scope of work as approved by the Historic Preservation Board must be resubmitted for review and approval. Any other work not specified in this application must be submitted for approval to the Historic Preservation Office. K.S.A. 75-2714(1)d allows for penalties up to \$25,000 per day for violation of this procedure.

NOTICE OF APPEAL PROCEDURE:

Any applicant or other interested party wishing to appeal a denial or approval with conditions of any certificate of appropriateness may appeal to the next higher authority. The order of the appeal procedure shall be: (1) the preservation staff; (2) the design review committee; (3) the historic preservation board; and (4) the city council. The applicant has five (5) days (Section 2.12.1023) to appeal.

If you have any questions, you may contact the Historic Preservation Planner at the Wichita-Sedgwick County Area Planning Department, City Hall, 455 N. Main, 10th Floor, telephone 268-4421.

Kathy L. Morgan, Historic Preservation Planner
Current Plans Division, MAPD

Date: February 26, 2009

48-198

AN ORDINANCE CREATING NEW CHAPTER 5.36 OF THE CODE OF THE CITY OF WICHITA, KANSAS, PERTAINING TO THE CRIME OF GAMBLING AND OTHER GAMBLING-RELATED CRIMES AND THE PENALTIES THEREFOR, AND REPEALING THE ORIGINAL OF SAID CHAPTER 5.36.

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS:

SECTION 1. Section 5.36.010 of the Code of the City of Wichita, Kansas, shall read as follows: **“Definitions.** For the purpose of this chapter, the words and phrases used herein shall have the following meanings unless otherwise clearly indicated by the context:

- (a) “Bet means a bargain in which the parties agree that, dependent upon chance, one stands the chance to win or lose something of value specified in the agreement. A bet does not include:
 - (1) Bona fide business transactions which are valid under the law of contracts including, but not limited to, contracts for the purchase or sale at a future date of securities or other commodities, and agreements to compensation for loss caused by the happening of the chance including, but not limited to, contracts of indemnity or guaranty and life or health and accident insurance;
 - (2) offers of purses, prizes or premiums to the actual contestants in any bona fide contest for the determination of skill, speed, strength, or endurance or to the bona fide owners of animals or vehicles entered in such a contest;
 - (3) a lottery as defined in this section;

- (4) any bingo game by or for participants managed, operated or conducted in accordance with the laws of the state of Kansas by an organization licensed by the state of Kansas to manage, operate or conduct games of bingo;
 - (5) a lottery operated by the state pursuant to the Kansas lottery act;
 - (6) any system of parimutuel wagering managed, operated or conducted in accordance with the Kansas parimutuel racing act; or
 - (7) tribal gaming.
- (b) “Lottery” means an enterprise wherein for a consideration the participants are given an opportunity to win a prize, the award of which is determined by chance. A lottery does not include;
- (1) A lottery operated by the state pursuant to the Kansas lottery act; or
 - (2) tribal gaming.
- (c) “Consideration” means anything which is a commercial or financial advantage to the promoter or a disadvantage to any participant.

Mere registration without purchase of goods or services; personal attendance at places or events, without payment of an admission price or fee; listening to or watching radio and television programs; answering the telephone or making a telephone call and acts of like nature are not consideration.

As used in this subsection, consideration does not include:

- (1) Sums of money paid by or for participants in any bingo game managed, operated or conducted in accordance with the laws of the state of Kansas by any bona fide nonprofit religious charitable, fraternal, educational or veteran organization licenses to manage, operate or conduct bingo games under the laws of the state of Kansas and

- it shall be conclusively presumed that such sums paid by or for such participants were intended by such participants to be for the benefit of the sponsoring organizations for the use of such sponsoring organizations in furthering the purposes of such sponsoring organizations, as set forth in the appropriate paragraphs of subsection (c) or (d) of section 501 of the internal revenue code of 1986 and as set forth in K.S.A. 79-4701 and amendments thereto;
- (2) sums of money paid by or for participants in any lottery operated by the state pursuant to the Kansas lottery act;
- (3) sums of money paid by or for participants in any system of parimutuel wagering managed, operated and conducted in accordance with the Kansas parimutuel racing act; or
- (4) Sums of money paid by or for a person to participate in tribal gaming.
- (d) (1) “Gambling device” means:
- (A) Any so-called “slot machine” or any other machine, mechanical device, electronic device or other contrivance an essential part of which is a drum or reel with insignia thereon, and (i) which when operated may deliver, as the result of chance, any money or property; or (ii) by the operation of which a person may become entitled to receive, as the result of chance, any money or property;
- (B) any other machine, mechanical device, electronic device or other contrivance (including, but not limited to, roulette wheels and similar devices) which is equipped with or designed to accommodate the addition of a mechanism that enables accumulated credits to be removed, is equipped with or designed to accommodate a mechanism to record the number of credits to be removed, or is otherwise designed, manufactured or

altered primarily for the use in connection with gambling, and (i) which when operated may deliver, as the result of chance, any money or property, or (ii) by the operation of which a person may become entitled to receive, as the result of chance, any money or property;

(C) any subassembly or essential part intended to be used in connection with any such machine, mechanical device, electronic device or other contrivance, but which is not attached to any such machine, mechanical device, electronic device or other contrivance as a constituent part; or

(D) any token, chip, paper, receipt or other document which evidences, purports to evidence or is designed to evidence participation in a lottery or the making of a bet.

The fact that the prize is not automatically paid by the device does not affect its character as a gambling device.

(2) Gambling device does not include:

(A) Any machine, mechanical device, electronic device or other contrivance used or for use by a licensee of the Kansas racing commission as authorized by law and rules and regulations adopted by the commission or by the Kansas lottery or Kansas lottery retailers as authorized by law and rules and regulations adopted by the Kansas lottery commission;

(B) any machine, mechanical device, electronic device or other contrivance, such as a coin operated blowing alley, shuffleboard, marble machine (a so-called pinball machine), or mechanical gun, which is not designed and manufactured primarily for use in connection with gambling, and (i) which when operated does not deliver, as a result of chance, any money or (ii) by the operation of which a person may not become entitled to receive, as the result of the application of an element of chance, any money;

(C) any so-called claw, crane, or digger machine and similar devices which are designed and manufactured primarily for use at carnivals or country or state fairs; or

(D) any machine, mechanical device, electronic device or other contrivance used in tribal gaming;

(E) A “gambling place” is any place, room, building, vehicle, tent or location which is used for any of the following: Making and settling bets; receiving, holding, recording or forwarding bets or offers to bet; conducting lotteries; or playing gambling devices. Evidence that the place has a general reputation as a gambling place or that, at or about the time in question, it was frequently visited by persons known to be commercial gamblers or known as frequenters of gambling places is admissible on the issue of whether it is a gambling place.

(F) “Tribal gaming” has the meaning provided by K.S.A. 74-9802 and amendments thereto.

(G) “Tribal gaming commission” has the meaning provided by K.S.A. 74-9802 and amendments thereto.

SECTION 2. Section 5.36.020 of the Code of the City of Wichita, Kansas, shall read as follows: “**Gambling.** Gambling is:

(a) Making a bet; or

(b) Entering or remaining in a gambling place with intent to make a bet, to participate in a lottery, or to play a gambling device.

Anyone gambling within the corporate limits of the city is guilty of a misdemeanor and shall be punished as set forth in Section 5.36.050, and any amendments thereto.”

SECTION 3. Section 5.36.030 Code of the City of Wichita, Kansas, shall

read as follows: **“Permitting premises to be used for gambling.** Permitting premises to be used for gambling is intentionally:

- (a) Granting the use or allowing the continued use of a place as a gambling place; or
- (b) Permitting another to set up a gambling device for use in a place under the offender’s control.
- (c) Anyone violating any of the provisions of this section shall be guilty of a misdemeanor and shall be punished as set forth in Section 5.36.050, and any amendments thereto.”

SECTION 4. Section 5.36.040 of the Code of the City of Wichita, Kansas, shall read as follows: **Possession of a gambling device.**

- (a) Possession of a gambling device is knowingly possessing or having custody or control, as owner, lessee, agent, employee, bailee, or otherwise, of any gambling device.
- (b) Anyone violating any of the provisions of this section shall be guilty of a misdemeanor and shall be punished as set forth in Section 5.36.050, and any amendments thereto.
- (c) It shall be a defense to a prosecution under this section that the gambling device is an antique slot machine and that the antique slot machine was not operated for gambling purposes while in the owner’s or the defendant’s possession. A slot machine shall be deemed an antique slot machine if it was manufactured prior to the year 1950.
- (d) It shall be a defense to a prosecution under this section that the gambling device is possessed or under custody or control of a manufacturer registered under the federal

gambling devices act of 1962 (15 U.S.C. 1171 *et seq.*) or a transporter under contract with such manufacturer with the intent to transfer for use:

- (1) By the Kansas lottery or Kansas lottery retailers as authorized by law and rules and regulations adopted by the Kansas lottery commission;
- (2) by a licensee of the Kansas racing commission as authorized by law and rules and regulations adopted by the commission;
- (3) in a state other than the state of Kansas; or
- (4) in tribal gaming.

SECTION 5. Section 5.36.050 of the Code of the City of Wichita, Kansas, shall read as follows: “**Penalty.** Any person, who, within the corporate limits of the City of Wichita, violates any of the provisions of this chapter shall be guilty of a misdemeanor and upon conviction shall be punished by a fine not to exceed one thousand dollars (\$1,000), or by six (6) month’s imprisonment, or by both such fine and imprisonment.”

SECTION 6. The original of Chapter 5.36 of the Code of the City of Wichita, Kansas, is hereby repealed.

SECTION 7. This ordinance shall be included in the Code of the City of Wichita, Kansas, and shall be effective upon adoption and publication in the official city newspaper.

PASSED by the governing body of the City of Wichita, Kansas, this 10th day of March,
2009.

Carl Brewer, Mayor

Attest:

Karen Sublett, City Clerk

Approved as to Form:

Gary E. Rebenstorf, Director of Law

City of Wichita
City Council Meeting
March 3, 2009

TO: Mayor and City Council Members

SUBJECT: CREATION OF NEW CHAPTER 5.36 OF THE CODE OF THE CITY OF WICHITA, KANSAS, PERTAINING TO GAMBLING AND GAMBLING-RELATED CRIMES.

INITIATED BY: Law Department

AGENDA: New Business

Recommendation: Approve first reading of the ordinance.

Background: Current provisions of the City Code regulating gambling have been unchanged for several years, some dating back to the 1930's. The Code prohibits betting on not only games of chance, but also games of skill. For many years the existing ordinances with their very broad prohibitions were applied by police and prosecutors. Over time, however, certain types of gambling activity became legal under state law, such as bingo, pari-mutuel wagering, tribal gaming facilities, and the state lottery. The Kansas statutes evolved to encompass these activities while the City's ordinances remained static. In addition to legalized forms of gambling, over the past few years, there has also been a surge of public interest in various types of poker as both a recreational pastime and as a charitable fund-raising activity. This surge of interest provided a catalyst for a review of the City's gambling laws and resulted in the proposed amendment.

Analysis: The proposed ordinance is designed to clarify the law regarding prosecution of gambling and gambling related offenses in municipal court. The language therein mirrors state law which has existed in statutory form for several years but was never been adopted as part of the Wichita City Code. Also, some gambling activities addressed by current city ordinances have been elevated to felonies under state law. Accordingly, these activities would be removed from the City Code by the proposed ordinance amendment.

Financial Considerations: None.

Goal Impact: Provide a Safe and Secure Community. This amendment will assist the Police Department and Law Department in charging and prosecuting gambling offenses in the Wichita Municipal Court. By establishing clear definitions of relevant terms and eliminating duplicitous violations, the proposed amendments will provide citizens with consistent guidelines regarding what constitutes illegal gambling in both state and local courts.

Legal Considerations: The City of Wichita Law Department drafted and approved the proposed ordinance as to form.

Recommendation/ Actions: It is recommended that the City Council approve first reading of the ordinance.

Attachment: Copy of the proposed new ordinance.

(First Published in The Wichita Eagle on March 13th, 2009)

March 3, 2009

ORDINANCE NO. 48-199

AN ORDINANCE AMENDING SECTION 5.30.020 OF THE CODE OF THE CITY OF WICHITA, KANSAS, PERTAINING TO REPORT REQUIRED; INFORMATION TO BE SHOWN AND REPEALING THE ORIGINAL OF SAID SECTION

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS:

Section 1. 5.30.020 of the Code of the City of Wichita, Kansas, shall read as follows:

- (a) Every physician who answers a call on an emergency case or who attends or administers to any patient that falls within the term of an emergency case as defined in the preceding section, and every hospital, hospital attendant or persons in charge thereof, who shall receive in their care, any patient in any emergency case shall immediately notify the police department of such case, giving the name and location of the patient and the nature of the injury.
- (b) If an examination, as provided for in K.S.A. 65-448(a) and amendments thereto, has taken place solely upon request of the victim, the medical care facility shall not notify the Wichita Police Department without the written consent of the victim, unless otherwise required by law.
- (c) There shall be no criminal liability for failing to comply with the provisions of subsection (b).

Section 2. The original of Section 5.30.020 of the Code of the City of Wichita, Kansas, is hereby repealed.

Section 3. This ordinance shall be included in the Code of the City of Wichita, Kansas, and shall be effective upon its passage and publication once in the official city paper.

PASSED by the governing body of the City of Wichita, Kansas, this 10th day of March, 2009.

Carl Brewer, Mayor

ATTEST:

Karen Sublett, City Clerk

Approved as to Form:

Gary E. Rebenstorf
Director of Law and City Attorney

CITY OF WICHITA
City Council Meeting
March 3, 2009

TO: Mayor and City Council Members

SUBJECT: AN ORDINANCE AMENDING SECTION 5.30.020 OF THE CODE OF THE CITY OF WICHITA, KANSAS, PERTAINING TO EMERGENCY CASES.

INITIATED BY: Law Department

AGENDA: New Business

Recommendation: Place the ordinance on first reading.

Background: City of Wichita Ordinance 5.30.020 requires that a physician, hospital, hospital attendant, or a person in charge thereof, who attends to a patient that has been injured by means of force and violence or by any unlawful act, or by accident, with the exception of industrial accidents, must report the incident to law enforcement, giving the name and location of the patient, as well as the nature of the injury. K.S.A. 65-448(a) was amended to mandate that reports pertaining to victims of sexual assault, who solely, upon their request have a sexual assault examination completed by a medical care facility, shall not be reported to law enforcement, without written consent of the victim. Evidence obtained from the sexual assault examination shall be sealed in a Kansas Bureau of Investigation kit, submitted to the KBI, and kept for a period of five years. The purpose of this exemption is to encourage victims of sexual assault to seek treatment and preserve evidence.

Analysis: Amendment to City of Wichita Ordinance 5.30.020 must be adopted to conform with reporting requirements under state law.

Financial Considerations: There is no financial impact from the amendment.

Goal Impact: Provide a Safe and Secure Community. Adopting this ordinance will encourage sexual assault victims to seek examinations and treatment, as well as allow for preservation of evidence.

Legal Considerations: The ordinance amendment has been prepared and approved as to form by the Law Department.

Recommendations/Actions: Place the ordinance on first reading.

Attachment: Delineated and clean copies of the proposed ordinance.

(First Published in The Wichita Eagle on _____)

March 3, 2009

ORDINANCE NO.

AN ORDINANCE AMENDING SECTION 5.30.020 OF THE CODE OF THE CITY OF WICHITA, KANSAS, PERTAINING TO REPORT REQUIRED; INFORMATION TO BE SHOWN AND REPEALING THE ORIGINAL OF SAID SECTION

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS:

Section 1. 5.30.020 of the Code of the City of Wichita, Kansas, shall read as follows:

(a) Every physician who answers a call on an emergency case or who attends or administers to any patient that falls within the term of an emergency case as defined in the preceding section, and every hospital, hospital attendant or persons in charge thereof, who shall receive in their care, any patient in any emergency case shall immediately notify the police department of such case, giving the name and location of the patient and the nature of the injury.

(b) If an examination, as provided for in K.S.A. 65-448(a) and amendments thereto, has taken place solely upon request of the victim, the medical care facility shall not notify the Wichita Police Department without the written consent of the victim, unless otherwise required by law.

(c) There shall be no criminal liability for failing to comply with the provisions of subsection (b).

Section 2. The original of Section 5.30.020 of the Code of the City of Wichita, Kansas, is hereby repealed.

Section 3. This ordinance shall be included in the Code of the City of Wichita, Kansas, and shall be effective upon its passage and publication once in the official city paper.

PASSED by the governing body of the City of Wichita, Kansas, this _____ day of _____, 2009.

Carl Brewer, Mayor

ATTEST:

Karen Sublett, City Clerk

Approved as to Form:

Gary E. Rebenstorf
Director of Law and City Attorney

**CITY OF WICHITA
City Council Meeting
March 3, 2009**

TO: Mayor and City Council Members

SUBJECT: REPEAL OF SECTION 5.55.010 AND SECTION 5.55.020 OF THE CODE OF THE CITY OF WICHITA, KANSAS, PERTAINING TO MOLOTOV COCKTAILS.

INITIATED BY: Law Department

AGENDA: New Business

Recommendation: Place repeal of ordinances on first reading.

Background: During the 2008 legislative session, K.S.A. 21-3731, Criminal Use of Explosives was amended to include possession, manufacture, or transportation of molotov cocktails as felony offenses. Municipal ordinances, unless specifically allowed by Kansas Statutes, may not create a misdemeanor offense for an act classified as a felony crime in the State of Kansas. Thus, this ordinance and penalty section must be repealed in accordance with State law.

Analysis: The amendments to K.S.A. 21-3731 create a felony crime for possession, manufacture, or transportation of a molotov cocktail, requiring City of Wichita Ordinance Sections 5.55.010 and 5.55.020 be repealed.

Financial Considerations: None

Goal Impact: Provide a Safe and Secure Community. This ordinance will allow the Police Department to charge violations pertaining to molotov cocktails in District Court.

Legal Considerations: The repeal of this ordinance was prepared and approved as to form by the Department of Law.

Recommendations/Actions: Place repeal of ordinances on first reading.

Attachment: Delineated copies of the ordinance.

(First Published in The Wichita Eagle on March 13, 2009)

March 3, 2009

ORDINANCE NO. 48-200

AN ORDINANCE REPEALING SECTION 5.55.010 and 5.55.020 OF
THE CODE OF THE CITY OF WICHITA, KANSAS, PERTAINING TO
MOLOTOV COCKTAILS

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF
WICHITA, KANSAS:

Section 1. Sections 5.55.010 and 5.55.020 of the Code of the City of Wichita, Kansas,
are hereby repealed.

Section 2. This ordinance shall be repealed upon its passage and publication once in the
official city paper.

PASSED by the governing body of the City of Wichita, Kansas, this 10th day of March,
2009.

Carl Brewer, Mayor

ATTEST:

Karen Sublett, City Clerk

Approved as to Form:

Gary E. Rebenstorf
Director of Law and City Attorney

(First Published in The Wichita Eagle on _____)

March 3, 2009

ORDINANCE NO.

AN ORDINANCE AMENDING SECTION 5.55.010 AND 5.55.020 OF THE CODE OF THE CITY OF WICHITA, KANSAS, PERTAINING TO MOLOTOV COCKTAILS

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS:

Section 1. ~~5.55.010 of the Code of the City of Wichita, Kansas, shall read as follows: It is unlawful for any person to transport, use or have in his possession or control a container of incendiary or explosive material, liquid, solid or mixture, equipped with a fuse, wick or any other detonating device of a kind commonly known as a “Molotov cocktail.”~~

Section 2. ~~5.55.020 of the Code of the City of Wichita, Kansas, shall read as follows: Any person violating the provisions of this chapter shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not more than five hundred dollars or six months’ imprisonment, or both such fine and imprisonment.~~

Section 3. This ordinance shall be effective upon its passage and publication once in the official city paper.

PASSED by the governing body of the City of Wichita, Kansas, this _____ day of _____, 2009.

Carl Brewer, Mayor

ATTEST:

Karen Sublett, City Clerk

Approved as to Form:

Gary E. Rebenstorf
Director of Law and City Attorney

**CITY OF WICHITA
City Council Meeting
March 3, 2009**

TO: Mayor and City Council Members

SUBJECT: Settlement of Litigation

INITIATED BY: Law Department

AGENDA: New Business

Recommendation: Authorize approval of the final settlement agreement.

Background: The Independent Living Resource Center filed a lawsuit in 2004 in state district court questioning the City's compliance with the requirements of the ADA and Rehabilitation Act. The City recognized that areas of non-compliance existed, and undertook an independent evaluation to define the steps to remedy this situation. A prior interim settlement agreement adopted those positive steps into a more comprehensive resolution designed to insure greater access across the entire spectrum of City facilities.

Analysis: The City performed an ADA self assessment in 1992, but the requirements of the law have become increasingly more defined since that time. City staff, under Council direction, has completed a functional and design review all City facilities in which deficiencies were noted by the independent expert, to arrive at an economical yet comprehensive plan to accomplish the modifications on a workable timetable. The City has already accomplished all modifications scheduled for completion at the end of calendar year 2009, and before this summer, will complete all 2010 goals. This settlement agreement will take the City down a path of substantial, but measured improvement in access. This will be accomplished on a timetable of priorities that has been set with the help of the City's selected consultant, and substantial input from ILRC and others representing organizations serving community members with disabilities. The net result has been a community-responsive transition plan, being implemented ahead of schedule at a substantial cost savings compared to court enforced modifications. Staff members from the Public Works Department, the City Manager's Office, and the Law Department meet regularly for oversight to insure continued progress toward satisfaction of the Transition Plan.

Goal Impact: Approval of this final settlement agreement recognizes a successful resolution of challenges advanced in the area of Efficient Infrastructure and significant improvements both made and to be made in the Quality of Life afforded to City residents.

Financial Considerations: Funding for the facility improvements arising from this settlement have come to date, and will continue to come, from the present and future budget allotments of the affected departments and existing CIP. Funding for the self assessment and transition plan was previously approved from the Public Works budget in 2005. An award of court costs and fees relating to this settlement has already been satisfied from the Tort Claims Fund in 2005.

Legal Considerations: The Law Department recommends acceptance of the final settlement agreement. It serves as the litigants' recognition of the City's compliance with the terms of the Final Transition Plan already adopted by the City Council, and of the Council's vision for future compliance.

Recommendations/Actions: Authorize acceptance of the final settlement agreement.

Attachment: Final Settlement Agreement

GARY E. REBENSTORF
City Attorney
JAY C. HINKEL, #11054
Deputy City Attorney
City Hall - 13th Floor
455 North Main
Wichita, Kansas 67202
(316) 268-4681

DISTRICT COURT, SEDGWICK COUNTY, KANSAS
CIVIL DEPARTMENT

INDEPENDENT LIVING RESOURCE)
CENTER, INC.,)
)
Plaintiff,)
)
vs.) Case No. 04 CV 220
)
CITY OF WICHITA, KANSAS,)
)
Defendant.)
_____)

Pursuant to Chapter 60 of Kansas Statutes Annotated

FINAL SETTLEMENT AGREEMENT

This agreement is entered into between the Independent Living Resource Center, Inc.(ILRC), and the City of Wichita, Kansas, on this _____ day of _____, 2009.

1. GENERAL PROVISIONS.

- 1.1 The purpose of this agreement is for the City of Wichita to achieve compliance with Title II of the Americans with Disabilities Act of 1990, 42 U.S.C. §§ 12101-12134, as implemented by regulations at 28 C.F.R. Part 35 ("Title II"), and Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, as implemented by regulations at 28 C.F.R. Part 42, Subpart G ("Section 504"), and to achieve compliance with K.S.A. 58-1301 *et seq.* The Final Transition Plan, designed as a living document, accounts for full facility and program compliance on a reasonable timetable.

- 1.2 Title II of the ADA prohibits discrimination on the basis of disability in all of the services, programs, and activities provided or conducted by States and local governments, including employment. 42 U.S.C. § 12132. Section 504 prohibits discrimination on the basis of disability in programs and activities that receive federal financial assistance. 29 U.S.C. § 794. Both statutes apply to the City of Wichita because it is a public entity under the ADA, and a recipient of federal funds under Section 504. 42 U.S.C. § 12131 (1); 29 U.S.C. § 794(b).
 - 1.3 The scope of this Agreement is the City of Wichita 's responsibility to comply with the provisions of the ADA, Section 504, and K.S.A. 58-1301 *et seq.* with respect to the City of Wichita's programs, services, and activities.
2. The City of Wichita and the Independent Living Resource Center, Inc. agree as follows:
 - 2.1 ADA Coordinators
 - 2.1.1 The City of Wichita has created and agrees to maintain the position of "ADA Coordinator," attached to the City Manager's Office and placed under the City Manager's direction and control, with access to sufficient resources to fulfill his or her duties, in order to plan and coordinate the City of Wichita's overall compliance with the ADA and Section 504. The ADA Coordinator's specific responsibilities include, but are not limited to, drafting the notice and the grievance procedure; investigating grievances relating to the City of Wichita's compliance with the statutes in its programs, services, and practices; involving people with disabilities and other interested parties in the compliance process; overseeing the accomplishment of the City of Wichita 's Final Transition Plan, ensuring program access, and ensuring compliance with K.S.A. 58-1301 *et seq.* The City has also compiled and will maintain a staff team to address responsibilities falling within the gambit of the ADA Coordinator, to include substantial, continuing involvement by an ADA associate engineer, an assistant traffic engineer, a deputy city attorney and a senior plans examiner.
 - 2.1.2 Each agency or department of the City of Wichita has designated an individual to perform the duties of a "departmental ADA coordinator," who works in concert with the ADA Coordinator to accomplish the purposes set forth in paragraph 2.1.1. The departmental ADA coordinators will keep the ADA Coordinator reasonably informed so that the departments' compliance efforts can be properly documented and monitored.
 - 2.2 Notice of ADA and Section 504 Requirements

2.2.1 The City of Wichita has made and agrees to continue to make available to applicants, employees, participants, beneficiaries and other interested persons information regarding the requirements of the statutes and their applicability to the City of Wichita's programs, services, and activities, and to make such information available to them in whatever manner may be appropriate, including alternative formats and the City's website, to apprise such persons of the protections against discrimination assured them by the statutes and their implementing regulations. This notice appraises the public of the appointment of the name, address, email address, and phone number of the ADA Coordinator and any departmental ADA coordinator. The City's current notice is attached as Exhibit A.

2.3 Grievance Procedure

2.3.1 The City of Wichita has adopted, published and maintains a grievance procedure providing for prompt and equitable resolution of grievances arising under Title II and Section 504. The grievance procedure incorporates the following four components: (a) a detailed description of the procedure for submitting a grievance; (b) a two-step review process that incorporates due process standards and allows for appeal; (c) reasonable time frames for review and resolution of the grievance; and (d) good record-keeping for all complaints submitted and documentation of steps taken towards resolution. The City of Wichita's ADA Coordinator (and departmental ADA coordinators) is responsible for receiving and investigating grievances brought pursuant to this grievance procedure. The City's current procedure is attached as Exhibit B.

2.3.2 Notice of the grievance procedure has been placed on the City's website home page with a link to a grievance form that can be filled out on-line and sent to the ADA Coordinator by email.

2.4 Self-Evaluation and Implementation of Non-Discriminatory Policies

2.4.1 The City of Wichita developed a Request For Qualifications (RFQ) for the purpose of obtaining a design professional to assist with the City's overall Title II compliance efforts and specifically to develop a Transition Plan, as defined by 28 C.F.R. § 35.150(d) and 28 C.F.R. § 42.521(d). The City selected the consultant based on qualifying criteria, with the involvement of the ILRC in the selection process. An ILRC representative participated as a voting member of the selection committee. The RFQ so developed is attached as Exhibit C.

2.4.2 The City conducted public input hearings relating to plan development with the participation of the consultant.

2.4.3 Involvement of Persons with Disabilities. The City of Wichita provides an opportunity for input to citizens with disabilities and other interested persons, via the Access Advisory Board (as defined in paragraph 2.6, below). This board has been expanded to serve Sedgwick County as well, fostering a unified community approach to ADA issues.

2.4.4 New Construction and Alterations Requirements. This Agreement will not alter the City of Wichita's compliance with the applicable Title II and Section 504 requirements that new construction and alterations be made readily accessible. A designee of the City Access Advisory Board serves and shall continue to serve on the Art and Design Review Board.

2.5 Preparation of Transition Plans

2.5.1 The City has prepared and adopted a Final Transition Plan which includes the following requirements from the Interim Transition Plan:

- 2.5.1.1 A list of the physical barriers, including a listing of the specific facilities and locations where barriers have been found, within The City of Wichita's facilities that limit the accessibility of its programs, activities, or services to individuals with disabilities;
- 2.5.1.2 A listing of each City program which is affected by the identified physical barriers;
- 2.5.1.3 The ADA Accessibility Guideline (ADAAG) citation(s) which pertains to each listed physical barrier;
- 2.5.1.4 A detailed outline of the methods to be utilized to remove these barriers and make the facilities accessible, considering input from the Access Advisory Board.
- 2.5.1.5 Prioritization for the removal of each identified physical barrier based on criteria established with the input of the Access Advisory Board.
- 2.5.1.6 The schedule for taking the necessary steps to achieve compliance with Title II and Section 504. The plan identifies the planned date of completion for each event, and notes the dates of actual completion along with the finalized action; and,

2.5.2 Final Transition Plan-Available for Public Inspection. The City of Wichita maintains the Final Transition Plan as a posting on the City's ADA website. It can be found at the following URL: <http://www.wichita.gov/cityoffices/ada/transitionplan.htm>. It contains thousands of active hyperlinks, so that ADAAG references noted and other supplemental technical information are available in full text form, and digital photographs of the selected element are available for view. (A printed version of the Final Transition Plan with expanded hyperlinks would comprise over 3,000 pages of text and graphics.)

2.6 The City of Wichita has established the City of Wichita Access Advisory Board.

2.6.1 The Board consists of at least 23 members with terms of one year each. Members can be selected by the stakeholders they represent to serve multiple terms. A Significant portion of the members are persons with disabilities. The Board includes design professionals and representatives from businesses or organizations who provide goods or services to persons with disabilities. The board can also include, and currently does include, appointees of Sedgwick County, with a goal of developing a uniform county wide focus on ADA issues.

2.6.2 Each member of the city council and the mayor appointed one member; and at least eight members consist of representatives of the following organizations:

2.6.2.1 City of Wichita ADA Coordinator

2.6.2.2 Unified School District No. 259

2.6.2.3 Independent Living Resource Center, Inc.

2.6.2.4 Kansas Disability Coalition, Inc.

2.6.2.5 Muscular Dystrophy Association, Inc.

2.6.2.6 Community Developmental Disability Organization

2.6.2.7 Sedgwick County Department on Aging

2.6.2.8 One representative from the following organizations:

2.6.2.8.1 Starkey, Inc.

2.6.2.8.2 Kansas Elks Training Center for the Handicapped

2.6.2.8.3 Rainbows United

2.6.2.8.4 ARC of Sedgwick County

2.6.2.9 One representative from the following organizations:

- 2.6.2.9.1 Envision
- 2.6.2.9.2 National Federation of the Blind
- 2.6.2.9.3 Wichita Association for the Visually Handicapped

2.6.2.10 Wichita Association of the Deaf

2.6.2.11 Cerebral Palsy Research Foundation

2.6.3 The board shall have the duties and responsibilities as determined by the City which shall include the following:

- 2.6.3.1 Advise the City of Wichita ADA Coordinator and departmental ADA coordinators.
- 2.6.3.2 Designate one member to serve on the Art and Design Review Board.
- 2.6.3.3 Review all city codes with the assistance of the Law Department and recommend amendments where necessary to ensure that the requirements of the Americans with Disabilities Act are met.
- 2.6.3.4 Assist in resolution of any access issues concerning City facilities and programs regarding persons with disabilities.
- 2.6.3.5 Develop recommendations on the future role of the access of persons with disabilities to programs in the city and help determine immediate access priorities.
- 2.6.3.6 Advise other public or private entities on access issues where it appears the board can make a positive contribution to resolve such problems.
- 2.6.3.7 Advise the City on any other matter concerning persons with disabilities as the board deems appropriate.
- 2.6.3.8 Hold such public hearings as it deems necessary.
- 2.6.3.9 Develop operating policies for the Board. A copy of the current operations policies of the Board is attached as Exhibit D.

- 2.6.3.10 Designate one member to serve on the Wichita Transit Advisory Board.
- 2.6.4 Staff support for Board meetings shall be provided by the City Manager's Office. This responsibility shall be shared with Sedgwick County to the extent that the Board serves both governmental entities.
- 2.6.5 The current mission statement for the Board is attached as Exhibit E.
- 2.7 K.S.A. 58-1301 *et seq.*
- 2.7.1 The City of Wichita has drafted and implemented a policy governing its compliance with K.S.A. 58-1301 *et seq.* requiring it to enforce the Americans with Disabilities Act as to the design and construction of all new, additions to and alterations of, facilities which are subject to Title III of the Americans with Disabilities Act. Such policy will include training on the ADA Accessibility Guidelines to all City staff and City contractors involved in the design, construction or alteration of City buildings or facilities. Under such policy, only those contractors who have completed a certification of training will be allowed to be recipients of City funds used for the design, construction or alteration of City buildings and facilities. A description of the City's applicable procedures and the contractor certification are attached hereto as Exhibit F.
- 2.7.2 The City of Wichita has passed an ordinance to require licensing and training for persons or businesses engaged in the business of re-stripping parking lots and shall implement such ordinance with all deliberate speed. This requirement does not relieve the property owner of any responsibility for compliance with the ADA and the City shall not be required to issue permits for re-stripping parking lots or to inspect parking lots where no building permit is issued. The Accessible Parking Patrol may enforce ordinance 11.52.020(25)(e).
- 2.7.3 The City of Wichita has adopted a policy which includes provisions for an effective enforcement procedure upon discovery of ADA noncompliance that existed when the certificate of occupancy was issued. A copy of that policy is attached as Exhibit G.
- 2.8 Accessible Parking Patrol.
- 2.8.1 The City of Wichita has instituted an Accessible Parking Patrol Program, which includes the following provisions:

- 2.8.1.1 The Accessible Parking Patrol Program (Exhibit H) is supervised and coordinated by the Chief of Police or his designee.
- 2.8.1.2 All persons wishing to work as volunteers for the Accessible Parking Patrol Program will file applications and those selected will have appropriate training.
- 2.9 Wichita has amended Ordinance 11.52.020(25)(e) to require public and private handicapped parking spaces to conform to the requirements set forth (as universal parking spaces) in Section 502 of the ADA and ABA Accessibility Guidelines for Buildings and Facilities published in the Federal Register on July 23, 2004, all are van accessible. Each accessible parking space shall be designated by a sign in the form required by the ADA.
3. This Agreement does not affect the City of Wichita's continuing responsibility to comply with all aspects of the ADA and Section 504.
4. Failure by either party to enforce this entire Agreement or any provision thereof with regard to any deadline or any other provision herein will not be construed as a waiver of the other party's right to enforce other deadlines and provisions of this Agreement.
5. If at any time either party desires to modify any portion of this Agreement because of changed conditions making performance impossible or impractical or for any other reason, it will promptly notify the other party in writing, setting forth the facts and circumstances thought to justify modification and the substance of the proposed modification. The party requesting modification will also provide a proposed alternative provision. The proposed modification will not take effect until the other party approves it in writing. The parties will not unreasonably withhold or delay written approval. If the parties are unable to agree on the modification, they shall engage in mediation. If that is unsuccessful, disputes concerning modification may be resolved by the court on motion filed by a party. The City has made substantial changes to the Final Transition Plan since its approval by City Council, including the addition of entire buildings to that Plan that were missed in the initial selfassessment. This provision shall not be construed to require the City to seek approval of changes made to the Final Transition Plan.
6. If either party believes that the other party has violated this Agreement or the ILRC believes that the City has violated the Americans with Disabilities Act, the Rehabilitation Act of 1973, or K.S.A. 58-1301 *et seq.*, that party will so notify the other party in writing. The parties will attempt to informally resolve within sixty (60) days any disputes that may occur under this Agreement. If the parties are unable to agree on the modification, they shall engage in mediation. If that is unsuccessful, either party may elect to bring such alleged violation to the attention of the Court by motion in the above-entitled case.

7. Remedies as provided for in 42 U.S.C. § 12205 shall apply to all court proceedings which may be required to enforce this agreement. The attorney fees previously paid to the plaintiff's counsel represent full payment of fees due as a prevailing party.
8. Notices to The City of Wichita will be made in writing and sent by certified mail to:

Jeanne Goodvin, ADA Coordinator
City of Wichita
455 N. Main
Wichita, Kansas 67202

Gary E. Rebenstorf
Director of the Law Department
City of Wichita
455 N. Main
Wichita, Kansas 67202
9. Notices to the ILRC will be made in writing and sent by certified mail to:

David P. Calvert
532 N. Market
Wichita, Kansas 67214

Cindi Unruh
Executive Director
Independent Living Resource Center, Inc.
3033 W. 2nd
Wichita, Kansas 67203
10. This Agreement is a public document.
11. The persons signing this document for The City of Wichita and the Independent Living Resource Center, Inc., represent that they are authorized to bind the respective associated named party to this Agreement.
12. The effective date of this Agreement is March 1, 2009.

APPROVED AS TO FORM:

Gary E. Rebenstorf
Director of Law

**INDEPENDENT LIVING RESOURCE
CENTER, INC.**

Jean Shuler
President, Board of Directors

DAVID P. CALVERT, P.A.

David P. Calvert
Attorney for Plaintiff

ATTEST:

Karen Sublett
City Clerk

CITY OF WICHITA, KANSAS

Carl Brewer,
Mayor

EXHIBIT A
SAMPLE NOTICE OF ADA REQUIREMENTS

The City of Wichita does not discriminate on the basis of disability in admission to, access to, or operations of its programs, services, or activities.

The City of Wichita does not discriminate on the basis of disability in its hiring or employment practices.

This notice is provided as required by Title II of the Americans with Disabilities Act of 1990.

Questions, concerns, complaints, or requests for additional information regarding the ADA may be forwarded to The City of Wichita's designated ADA Coordinator.

Name: Jeanne Goodvin
Title: City of Wichita ADA Coordinator
Office Address: 455 N. Main
Phone Number: 316/268-4351 TTY: Use Kansas Relay Center 711
Days/Hours Available: Monday – Friday 8:00 a.m. to 5:00 p.m.
24/7 E-mail at ADA@Wichita.gov

Individuals who require auxiliary aids and services for effective communication in programs, activities, and services of The City of Wichita are invited to make their requirements and preferences known to the ADA Coordinator.

This notice is available in large print, on audio tape, and in Braille, from the ADA Coordinator.

EXHIBIT B
CITY OF WICHITA GRIEVANCE PROCEDURE (SAMPLE)

This Grievance Procedure is established to meet the requirements of the Americans with Disabilities Act. It may be used by anyone who wishes to file a complaint alleging discrimination on the basis of disability in employment practices and policies or the provision of services, activities, programs, or benefits by The City of Wichita.

The complaint should be in writing and contain information about the alleged discrimination such as name, address, phone number of complainant and location, date, and description of the problem. Alternative means of filing complaints, such as personal interviews or a tape recording of the complaint, will be made available for persons with disabilities upon request.

The complaint should be submitted by the grievant and/or his/her designee as soon as possible but no later than 60 calendar days after the alleged violation to:

Jeanne Goodvin, ADA Coordinator
268-4351
455 N. Main
Wichita, Kansas 67202

Within 15 calendar days after receipt of the complaint, the ADA Coordinator will meet with the complainant to discuss the complaint and possible resolutions. Within 15 calendar days after meeting, the Coordinator will respond in writing, and, where appropriate, in a format accessible to the complainant, such as large print, Braille, or audio tape. The response will explain the position of the City of Wichita and offer options for substantive resolution of the complaint.

If the response by the ADA Coordinator does not satisfactorily resolve the issue, the complainant and/or his/her designee may appeal the decision of the ADA coordinator within 15 calendar days after receipt of the response to the city manager or his or her designee (who will not be the ADA Coordinator). Within 15 calendar days after receipt of the appeal, the city manager or his or her designee will meet with the complainant to discuss the complaint and possible resolutions. Within 15 calendar days after the meeting the city manager or his or her designee will respond in writing, and, where appropriate, in a format accessible to the complainant, with a final resolution of the complaint.

All written complaints received by the ADA Coordinator, appeals to the city manager or his or her designee, and responses from the ADA coordinator and city manager or his or her designee will be kept by the City of Wichita for at least three years.

EXHIBIT C

REQUEST FOR QUALIFICATIONS (RFQ)

PROFESSIONAL SERVICES

EVALUATION OF CITY BUILDINGS AND FACILITIES FOR

AMERICANS WITH DISABILITIES ACT (ADA) COMPLIANCE

INTRODUCTION AND BACKGROUND

The City of Wichita (City) is subject to the requirements of Title II of the Americans with Disabilities Act (ADA), which applies to the operations of State and local governments. This mandates that programs and services offered to the Public by the City be provided in buildings or other facilities that are in compliance with the Americans with Disabilities Act Accessibility Guidelines (ADAAG).

Since the enactment of the Americans With Disabilities Act, the City has made many upgrades to existing buildings and facilities (facilities) to make them as ADA compliant as possible within the physical limitations of the existing structures and available financing. Also, as new facilities have been constructed, the City's intent has been that they meet or exceed all applicable requirements of the ADA. However, despite the efforts that have been made, the City has become aware of instances where various aspects of certain facilities are not fully ADA compliant.

Therefore it is the intent of the City to undertake a comprehensive ADA compliance review of all City facilities where programs and/or services are provided to the public. The purpose of this review will be to identify in detail all instances in which these facilities are not fully ADA compliant. ADA deficiencies identified in this review will be prioritized by the City and used as the basis for constructing a multi-year Transition Plan. Under this Transition Plan, the City will modify or replace existing facilities as necessary in order to provide fully accessible programs and services. In other instances, programs or services may be relocated to fully accessible facilities meeting the ADAAG requirements.

STATEMENT OF POLICY

It is the policy of the City of Wichita to retain professional services on the basis of demonstrated competence and qualification for the type of services required. A qualifications based process will be used to select firms interested in providing professional services on technical projects.

SELECTION PROCESS:

1. The City's Staff Screening and Selection Committee will review and evaluate responses to this RFQ and select an appropriate number of qualified firms to invite to respond to a detailed Request for Proposal (RFP)
2. The Purchasing Manager will mail to the selected firms an RFP that outlines the project scope and/or desired outcomes; as well as, any items the City may wish to give priority weighting. Selected firms may then submit a written response to the RFP. The Staff Screening and Selection Committee may select a firm based on the written proposal, an interview or both. The method of selection will be disclosed in the written RFP.
3. Regardless of the selection method used, evaluation sheets will be completed by each committee member for all RFP's received or interviews conducted in order to document the selection process. The committee will decide the weightings to be given to the various rating criteria prior to any evaluation. The firm with the highest ranking will be selected. Ties will be broken on the basis of the following criteria:
 1. Local consultants are preferred to non-local consultants;
 2. Non-local consultant firms which include local consultants on their teams are preferred to non-local firms which do not; and
 3. Consultants who have not recently completed work for the City of Wichita will be given greater consideration than those who have recently completed work for the City of Wichita.
4. **Background Review:** Prior to final selection, a criminal background check of the potential consultant employees will be required if the scope of services require the consultant to either have keys to City facilities or access to any security sensitive areas during the performance of their required work activities.
5. **Contract Negotiation:** The selected firm will be requested to meet with City representatives to precisely define the scope of service to be provided, to submit a time for completion of services and to negotiate consultant service fees. If, after reasonable effort, a contract cannot be negotiated, the negotiations with the designated consultant shall be terminated in writing and negotiations shall commence with the next highest ranked firm.
6. **Contract Approval:** Approval of the contract will be the responsibility of the City Council.
7. **Performance Evaluation:** Upon contract completion/termination, a contract completion summary sheet will be prepared that evaluates the professional firm and/or consultant's handling of the project. This summary will become part of the project's official file. The completed evaluation will be given to the consultant prior to the final project evaluation meeting to allow the consultant adequate time to address evaluation feedback. After the final evaluation meeting, the consultant will have the opportunity to submit written comments about the project to be attached to the final evaluation. The contract completion summary sheet with attached comments will then be submitted to the Staff Screening/Selection Committee Chairperson or his/her designee for review and subsequently filed in the consultant's file with the Purchasing Manager and will be retained for three years.

SCOPE OF SERVICES

Wichita, Kansas, is a city of approximately 300,000 people and covers an area of roughly 35 square miles. Within that area, the City provides approximately 90 parks and golf courses with related buildings, 35 miles of bike paths, 12 public parking lots totaling over 1100 spaces, 5 public parking garages totaling over 2500 spaces, and over 60 other buildings providing public programs and/or services totaling over 3,000,000 square feet. In addition, the City owns 10 additional facilities that are operated by others but are included in this scope of services. These include major facilities such as the Hyatt Regency Hotel, Ice Sports Arena, Kansas Aviation Museum, Lawrence Dumont Stadium and other smaller facilities.

The City has separated all its facilities that provide programs or services to the public into two groups (Group 1 and Group 2) with the intent of creating two roughly equal bodies of work. The selection process will determine if separate firms will be contracted for the work in Group 1 and Group 2, or if a single contract will be awarded for both. The two groups of facilities are as described below and as will be further defined in the RFP sent to selected firms.

GROUP 1 – Park Buildings and other Park Facilities
Golf Course Buildings and other Golf Facilities
Bike Paths

GROUP 2 – Public Parking Garages and Parking Lots
Other City Buildings and Related Facilities
City Owned Buildings operated by others

The selected firms (or firm) will be required to do a thorough and complete on-site review of the facilities and the surrounding City property as listed in the group (or groups) for which they are contractually responsible. This review shall include checking all aspects of the facilities for complete compliance with all requirements of ADAAG as it relates to the providing of public programs and services by a Title II entity, and where applicable, a Title III entity. This should include a thorough and complete review relating to program accessibility, 28 CFR Part 35, Subpart D (35.150 and 35.151), as well as construction standards.

The selected firms (or firm) will be required to check and record all dimensions, slopes, and other details as specified for compliance in ADAAG. A legible and logically organized copy of all such field records shall be prepared and provided to the City at the conclusion of the project. All items determined to be non-compliant with ADAAG and that affect the delivery of programs and/or services to the public shall be organized to provide specific information in a format and using specific software (Microsoft Word or Microsoft Excel) as determined and specified by the City. That format will include specific supporting citations to ADAAG or other statutory or regulatory foundation, as appropriate. These specific requirements will be as presented in the RFP and as may be modified later during contract negotiations. If contracts for evaluating the facilities in Groups 1 and 2 are awarded to two separate firms, it shall be

agreed that both firms shall present their information using exactly the same format and the same software.

REQUIRED SUBMITTALS FOR RFQ

All responses to this RFQ shall in the form of a letter detailing the firm's interest in the work and its unique qualifications. In addition, the response shall include the following:

1. Resume of the principal who will be responsible for the work, the project manager and all project team members with emphasis on each person's specific education in all aspects of the ADA regulations and technical requirements, their demonstrated understanding of this knowledge, and their experience in performing ADA facility compliance evaluations for Title II and Title III entities.
2. Listing of projects performed by the Principal in Charge and the Project manager in the preceding five (5) years of similar size, type and complexity for Title II entities.
3. Listing of projects performed by the Principal in Charge and the Project manager in the preceding five (5) years for Title III entities such as large hotels or sporting venues.
4. Client references for projects listed in numbers three and four above.
5. Typical sample pages (maximum 10 pages) from final documentation for projects listed in numbers 2 and 3 above.
6. Any potential conflicts of interest.
7. Firm's interest in providing services for Group 1, Group 2 or both.

Submit one (1) original and ten (10) copies of your response to this RFQ by November 12, 2004 at 3:00 p.m. to the Purchasing Manager at 455 North Main, 12 Floor, and Wichita, KS 67202.

SPECIAL CONDITIONS

1. The City of Wichita may issue supplementary information by addenda relating to this RFQ during the response period.
2. All proposals, including supporting documentation, shall become the property of the City of Wichita.
3. All costs incurred in the preparation and submittal of a response to this RFQ shall be wholly absorbed by the submitting party.

SEE FOLLOWING PAGE FOR CONTACT INFORMATION

CONTACTS

Direct questions to:

Norman Jakovac, Project Manager
City of Wichita
455 N. Main, 8 Floor th
Wichita, KS 67202
Tel: 316-268-4474
Fax. 316-337-9027 E-mail: njakovac@wichita.gov

Ed Martin, Building Services Director
City of Wichita
455 N. Main, 8 Floor th
Wichita, KS 67202
Tel. 316-268-4119
Fax. 316-337-9027 E-mail: emartin@wichita.gov

Jeanne Goodvin, ADA Coordinator
City of Wichita
455 N. Main, 13 Floor th
Wichita, KS 67202
Tel. 316-268-4351
Fax. 316-268-4519 Email: jgoodvin@wichita.gov

EXHIBIT D

Wichita / Sedgwick County Access Advisory Board Operating Policies

Duties and Responsibilities

The name of this Board shall be the Wichita / Sedgwick County Access Advisory Board. The Board shall have the following duties and responsibilities:

1. Advise the City of Wichita ADA Coordinator, the Sedgwick County ADA Coordinator, and departmental ADA coordinators.
2. Designate one or more members to serve on the City of Wichita Art and Design Review Board. The member or members shall be designated by the Chairperson with the approval of the Access Advisory Board.
3. Review all city codes and county resolutions with the assistance of the City Law Department and County Counselor's Office, respectively, and recommend amendments where necessary to ensure that the requirements of the Americans with Disabilities Act are met.
4. Assist in resolution of any access issues concerning city and county facilities and programs regarding persons with disabilities.
5. Develop recommendations on the future role of the access of persons with disabilities to programs in the city and county, and help determine immediate access priorities.
6. Advise other public or private entities on access issues where it appears the board can make a positive contribution to resolve such problems.
7. Advise the City and County on any other matter concerning persons with disabilities as the board deems appropriate.
8. Hold such public hearings as it deems necessary.
9. Develop operating policies for the Board.

Participation

1. The Board shall consist of members with terms of one year each commencing May 1 of each year. Each member shall serve the full term and until his or her successor is appointed and qualified. The Board shall include substantial representation by persons with disabilities, design professionals and representatives from businesses or organizations who provide goods or services to persons with disabilities.
2. Each member of the city council and the mayor shall appoint one member; each member of the county commission and the city and county managers shall each appoint one

member; and at least nine members shall consist of representatives of the following organizations:

- a. City of Wichita ADA Coordinator
- b. Unified School District No. 259
- c. Independent Living Resource Center, Inc.
- d. Kansas Disability Coalition, Inc.
- e. Muscular Dystrophy Association, Inc.
- f. Community Developmental Disability Organization
- g. Sedgwick County Department on Aging
- h. One representative from the following organizations:
 - Starkey, Inc.
 - Kansas Elks Training Center for the Handicapped
 - Rainbows United
 - ARC of Sedgwick County
- i. One representative from the following organizations:
 - Envision
 - National Federation of the Blind
 - Wichita Association for the Visually Handicapped
- j. Wichita Association of the Deaf
- k. Sedgwick County ADA Coordinator

3. Staff support shall be the shared responsibility of the City and County ADA coordinators. It shall be the responsibility of staff to prepare summaries of the board meetings which will be distributed as expeditiously as possible to the full board and made available to the public upon request and will be ratified by the full board at its next meeting.

4. Each member of organizations 2b through 2j may designate, in writing, an alternate member(s) representing the same interest as the designated member. The members will fully brief the alternates on the progress of the discussions and will give them full authority when they serve on the board. No person may represent more than one board member during the same meeting. The Chairperson of the board shall be elected by a majority of the members of the advisory board at the first meeting after May 1 of each year. The Chairperson of the board may appoint a Vice-Chairperson and Chairpersons of any subcommittees.

5. Any member of the Board shall be deemed to have resigned after nonattendance at four consecutive meetings or for absence of more than 2/3 of the meetings held during any twelve month period of time. The Chairperson of the Board shall provide written notice to the nonattending Board member and the appointing authority and, if applicable, the organization the nonattending member represents. A vacancy shall be declared unless the board member requests a hearing before the Chairperson and the Vice-Chairperson within twenty days after notice is provided.

6. Additional board members may be appointed by the City Manager or County Manager.

7. Subcommittees may be appointed by the chairperson of the board to address specific issues consistent with the purpose of the board. Subcommittees meetings are open to the public and the subcommittees may include persons who are not members of the Access Advisory Board.

8. Each board member shall refrain from violating any of the statutes of the state which regulate conflicts of interest where such statutes are applicable to the board members.

9. Board members must be residents of Sedgwick County.

Meetings

1. All meetings of the Wichita/Sedgwick County Access Advisory Board shall be open to the public.

2. A quorum of one-third of the board membership will be required to conduct business of the board.

3. A progress report of subcommittee meetings shall be prepared and sent by subcommittee chairs to board members prior to the next meeting. The subcommittee report will be made available to the public upon request to the Board. The progress report shall include names and affiliations of those present; the date, time and location of the meeting; and a description of issues discussed and recommendations made, if any.

4. Board members and/or any group of board members do not have the authority to speak on behalf of the board or to represent the board on any issue unless authorized by a majority of the members of the board at a regular meeting.

5. Board and subcommittee meetings will be held in accessible locations and provide for communications access. Persons attending board meetings are requested to refrain from using perfume, cologne, and other fragrances for the comfort of other participants.

6. Advisory board meetings will be held monthly or as determined by the board.

Operating Policy Amendments

1. The members may amend these Operating Policies (except for Duties and Responsibilities) at any time by majority vote.

2. These Operating Policies are governed by the Code of the City of Wichita, Chapter 2.12. Where any of the policies enumerated herein are in variance with any provision of Chapter 2.12, such variance is authorized by Section 2.12.050.

Adopted by the Wichita Access Advisory Board this 2nd day of June, 2005.

Amended by the Wichita / Sedgwick County Access Advisory Board this 23rd day of April, 2008.

EXHIBIT E

Wichita Access Advisory Board MISSION STATEMENT

The mission of the Wichita/Sedgwick County Access Advisory Board is to enhance the community by the contributions of persons with disabilities; to make a positive difference in their relationship with the City of Wichita and Sedgwick County businesses that serve it by working toward providing access to facilities, programs, and employment; and, enabling persons with disabilities to participate in the social and economic life of the community, thereby achieving maximum personal independence.

EXHIBIT F

City of Wichita
ADA/504 Contractor Assurance of Compliance Form

Assurance of Compliance Form

All individuals or organizations that contract directly with the City of Wichita, or subcontract with a direct contractor for the purpose of constructing, altering, or adding to City of Wichita buildings or facilities must complete, sign and return this form with your contract. If you have questions regarding this form, or if you require this material in an alternate format, please contact the City of Wichita's ADA Coordinator, Jeannie Goodvin at (316) 268-4351 (voice) or by e-mail to JGoodvin@wichita.gov. *Hearing- and/or speech-impaired persons using a TDD/TTY may contact us through the Kansas Relay Center at 711.*

ADA/504 General Information

Federal and state laws prohibit discrimination based on disability. Section 504 of the Rehabilitation Act of 1973, as amended (504), and the Americans with Disabilities Act of 1990 (ADA) require that the City of Wichita and all organizations or firms contracting with the City of Wichita, except those providing tangible goods, comply with ADA/504 accessibility requirements.

Contractor Assurance of Compliance

As a contractor or funding recipient from the City of Wichita, I understand that federal and state laws prohibit discrimination in public accommodations and employment based solely on disability. In addition, I recognize that Section 504 requires recipients of federal funds (either directly or through contracting with a local governmental entity receiving federal funds) to make their programs, services, and activities, when viewed in their entirety, accessible to qualified and/or eligible people with disabilities. I agree to comply with, and to require that all subcontractors comply with, ADA/504 requirements. I understand that reasonable accommodation is required in both program services and employment, except where to do so would cause an undue hardship or burden. I also agree that all new construction, alterations, or additions to City of Wichita buildings or facilities, performed by my organization or its subcontractors, must comply with all city, state, and federal laws, including related building guidelines/codes, and specifically the Americans with Disabilities Accessibility Guidelines (ADAAG).

I agree that any violation of the specific provisions of the ADA or 504, which are applicable to my organization or work my organization is currently performing or has performed at City of Wichita buildings or facilities, shall be deemed a breach of the material provision of my Contract between the City of Wichita and my organization. Such a breach shall be grounds for cancellation, termination or suspension, in whole or in part, of my organization's Contract by the City of Wichita, or for demand and enforcement of remedial Contract requirements.

Training Completion Certification

Pertinent individuals from my organization are knowledgeable of all scoping provisions and specifications as defined by the Americans with Disabilities Act Accessibility Guidelines and have easy access to such information when necessary as evidenced by the attached signed *ADAAG Training Completion Certificate*, which was obtained within the past twelve months.

I declare that (company name)_____ is in compliance with the applicable provisions of the ADA and 504 and declare that the foregoing information is true and correct and that I have full authority to make this declaration.

Signature of authorized signatory

Date

Type or print name of authorized signatory

Title

Telephone

Type or print legal name of business entity

EXHIBIT G

Enforcement Of ADA Compliance In New Construction Or Alterations

The City's building permit system exists to safeguard the life, health, property and welfare of the public through plan review, issuance of building permits, licensing of contractors and construction inspection. Licensed contractors, and the property owners who hire them, are responsible to ensure that new construction and alteration work complies with the construction requirements of Title II of the ADA for public projects and the construction requirements of Title III of the ADA for private construction projects. This is part of a broader review by Office of Central Inspection staff used to check for electrical, plumbing, fire and other code conformity. Although the City conducts plan reviews, issues permits and conducts subsequent on-site inspections, the obligation to conform to the law never shifts from the contractor and property owner to the City or anyone else.

The act relating to accessibility of public buildings and facilities, K.S.A. 58-1301 et seq., places the authority to enforce ADA requirements for the design and construction of new, additions to, and alterations of facilities of public accommodation that require a building permit upon the City's building inspector or agency responsible for that function. The Office of Central Inspection uses the plan review process and the on-site construction inspection process as the primary tools for this purpose. It is the goal of the City of Wichita that no building requiring issuance of a building permit be issued a final certificate of occupancy prior to fully complying with ADA requirements.

For construction work occurring within the corporate limits of the City of Wichita for which a permit application is submitted on or after January 1, 2007, any violation of the standards set out in the act may be enforced by the City Attorney for the City of Wichita. The City Attorney may apply to the district court for a temporary or permanent injunction restraining any individual, corporation or partnership from violating the standards established by the act. The City Attorney may also seek alteration of the facility affected, reasonable expenses, and investigation fees. Intentional violations of the district court's order can trigger additional court-imposed, civil penalties.

EXHIBIT H

CITY OF WICHITA ACCESSIBLE PARKING PATROL

MISSION STATEMENT

It is important to the City of Wichita that parking be accessible and available for people with disabilities. In order to assist in the endeavor to provide access to parking reserved for people with disabilities, volunteers will be utilized to identify violations pertaining to unlawfully parking within accessible parking areas, as well as those who unlawfully block access zones. It is with these volunteers, that violators will be identified, and violations of these laws will ultimately be enforced.

DESCRIPTION OF THE PROGRAM

The volunteer program will be utilized for the identification of possible violations of the laws regarding parking within a designated accessible parking area, as well as access zone violations only. The volunteer program will be supervised and managed by the Wichita Police Department. The volunteers shall report to, and be subject to direct supervision, by a law enforcement officer designated by the Chief of Police. The supervisor shall provide for initial training of the volunteers, continuing educational training of the volunteers, monthly meetings with the volunteers, background checks on volunteer applicants, and screening of violations for issuance of citations. The law enforcement supervisor, or others with authority to issue citations, shall review photos taken of alleged violations, and shall cause citations to be issued in instances that support prosecutable violations. The law enforcement officer shall retain discretion over cases that should or should not be filed. The City of Wichita Department of Law retains prosecutorial discretion over all violations or alleged violations, during all stages of the process.

The volunteers will be issued like vests or jackets identifying them as volunteers with the City of Wichita Volunteer Accessible Parking Enforcement Program. The volunteers shall wear these vests or jackets, along with name identification, at all times while working in the capacity of volunteer. All volunteers shall utilize their own resources for transportation, fuel, and automobile insurance, for vehicles utilized during their volunteer enforcement hours. When a volunteer identifies a violation of the accessible parking ordinance, or access zone violation, a photograph shall be taken of the back of the vehicle. The volunteer shall not initiate conversation with possible violators, and when conversation is initiated by possible violators shall advise that they have been instructed by the Wichita Police Department not to visit with possible violators or simply walk away. The volunteers shall carry a cell phone with them during the time they are working as a volunteer. The phones are to be utilized in the event of emergency. The phones are to be maintained and provided by the volunteer.

The film for the photographs will be supplied by the City of Wichita. Film developing will be paid for, and accomplished by the City of Wichita. In lieu of film, any volunteer may utilize a digital camera, providing printed copies of the photographs to the law enforcement

supervisor of the program.

It is of utmost importance to the City of Wichita that this be a program designed to provide an avenue for enforcement, but maintain the safety of its volunteers. Keeping both objectives in mind, the following requirements and program rules should be created.

REQUIREMENTS FOR ACCESSIBLE PARKING ENFORCEMENT VOLUNTEER

Description of Duty:

A volunteer patrols parking lots photographing violations of the accessible parking ordinances, within the City of Wichita. Volunteers may request citations for displaying an expired handicapped placard, unauthorized parking in an accessible parking space, parking in an access aisle, or blocking an accessible parking space. The volunteer will report to, and be supervised by a law enforcement officer designated by the Chief of Police. The volunteer will appear and testify in court when requested by the City of Wichita Department of Law.

Minimum Requirements For Volunteer Applicant:

1. High School Graduation or GED
2. Knowledge/skill in understanding and applying accessible-parking laws
3. Effective communication skills
4. Capability to identify a vehicle that is eligible to park in a designated parking space
5. Ability to take photographs of violations
6. Ability to handle situations of stress and/or confrontations by the public
7. Ability to attend court hearings as required
8. Must be at least 21 years of age
9. Must hold a valid Class "C" Drivers License
10. Must have transportation, and maintain at a minimum a continuous liability insurance policy
11. Must be able to provide fuel for transportation while working as a volunteer
12. Must have a cell phone in possession while working as a volunteer
13. Must have no prior convictions, and be able to pass a background investigation
14. Must have no history of mental instability, or competency issues
15. Must be able to write legibly
16. Must pass a drug/alcohol screen and submit to random testing upon request
17. If you have had military service, discharge must be "honorable," or "under honorable conditions."
18. No more than two moving violation convictions, diversions, or being at fault in more than one accident during the past twelve months.
19. No convictions, diversions, or expungements of any felony or misdemeanor crime(s).
20. Ability to donate at least six hours per month to the volunteer program.

Limitations of Volunteers:

1. No volunteer will be deemed a law enforcement officer, or have duties, responsibilities, or the authority of a law enforcement officer.
2. No volunteer will identify himself/herself as a law enforcement officer or hold himself or herself out as a law enforcement officer.
3. No volunteer will receive any compensation from the City of Wichita while in the capacity of an accessible parking enforcement volunteer.
4. No volunteer shall have the power or duty to enforce other traffic, criminal, or civil laws.
5. No volunteer shall possess or carry firearms or other weapons while working as a volunteer.
6. No volunteer will disobey an order from his or her law enforcement supervisor. The refusal to obey an order will be grounds for termination of the volunteer from the program.
7. No volunteer will attempt to contact those in violation of the accessible parking ordinances. A volunteer will avoid any contact with those who have committed a potential violation of the accessible parking ordinances. A volunteer will avoid confrontation during volunteer activities.
8. Being under the influence of alcohol by a volunteer while at work or while performing services on behalf of the City is prohibited. The possession or use of alcohol, while at work or while performing services on behalf of the City is prohibited. Violation of this policy will result in dismissal as a volunteer from the program.
9. The possession, use, or being under the influence of an illicit drug by a volunteer while at work or while performing services on behalf of the City is prohibited. An illicit drug is a controlled substance, as defined by the State of Kansas Uniform Controlled Substance Act, as it may be revised from time to time, which is used in some manner without a prescription or medical supervision. Violation of this policy will result in dismissal as a volunteer from the program.
10. A volunteer's use of, or being under the influence of, a legally obtained drug which may affect the safety of the employee, his or her co-workers, or members of the public, is prohibited. A volunteer or employee who has reason to believe that the use of a legal drug may present a safety risk to himself/herself or others should report that use to his/her supervisor to determine job related consequences. Failure to follow this policy will result in dismissal of the volunteer.

11. Being under the influence of an intoxicating substance by a volunteer while at work or while performing services on behalf of the City is prohibited. An intoxicating substance is any substance which produces changes in one's physical, mental, or emotional state or behavior, including, but not limited to glue, paint thinner, etc. Failure to follow this policy will result in dismissal of the volunteer from the program.

TRAINING OBJECTIVES

Initial Training of Volunteers:

- Accessible Parking Ordinances for the City of Wichita
- Penalty Provisions associated with violations
- State laws applicable to accessible parking areas
- The physical location of the City limits
- The enforcement areas approved by law enforcement supervisor
- Identification of a properly marked accessible parking space
- Identification of vehicles lawfully parked within accessible parking spaces
- The court process, and what is expected of volunteers in court
- The necessity of safety precautions
- How to obtain emergency assistance if needed
- Contact information if questions
- How to de-escalate a potentially violent situation
- Customer Service
- Process for photographs and subsequent citations
- How to take photographs and load film into cameras
- How to document violations
- Confidentiality

Recruitment of Volunteers:

The Wichita Police Department will be responsible for recruitment efforts aimed at those who desire to participate in the program. As part of the initial process, the following must be submitted:

- Application
- Copy of Valid Drivers License
- Verification for Status of Training
- No less than three references from other than family members
- Proof of transportation and continuing insurance

The law enforcement supervisor will review the applications and complete a background investigation on each of the applicants, apparently qualified. Those successful applicants that have satisfactorily passed a background investigation will be subject to interview by a panel. The panel shall consist of a person from the City of Wichita Department of Law, the Wichita Police Department, and the Municipal Court. Those recommended by the interview panel, shall be assigned an initial training date. Volunteers will not be able to work until they have successfully completed the initial training course.

Failure to submit the required information, an unsatisfactory finding on a background investigation, or failure to meet the eligibility requirements , will result in the applicant being rejected for a volunteer position.

Failure to submit to or failing a drug/alcohol screen will result in the applicant being rejected for a volunteer position.

DISCIPLINE

All volunteers will be subject to discipline and/or dismissal for any violation or violations of policy. All volunteers are expected to conduct themselves in a professional, courteous manner. Anyone who fails to act in a professional and courteous manner shall be subject to dismissal as a volunteer. All volunteers are subject to periodic performance reviews by their law enforcement supervisor. A succession of unsatisfactory reviews will lead to discipline and/or dismissal from the volunteer program. A violation or violations of policy regarding safety will result in discipline and/or dismissal from the program.

PROGRAM FUNDING

Persons violating any of the laws regarding parking within a designated accessible parking area, or blocking an access zone, shall be fined in accordance with the scheduled fine set by the Court. A sum of \$1.00 from each of the fines assessed shall be returned to the accessible parking control program. This revenue shall be utilized for expenses associated with purchase of film, cameras, film processing, equipment, uniforms, and training associated with the program.

ORDINANCE AMENDMENT REQUIRED FOR IMPLEMENTATION

Section 11.25.020 of the Code of the City of Wichita is now obsolete, and will require an amendment to continue the accessible enforcement program. This section mandates that the director of human services draft rules and supervise this program. The City of Wichita no longer has a director of human services, and thus no rules or regulations are in existence or being monitored by this obsolete position. An amendment to 11.25.020 would allow the program to continue with a new structure.

**City of Wichita
City Council Meeting
March 3, 2009**

TO: Mayor and City Council

SUBJECT: 2010 Federal Legislative Agenda

INITIATED BY: City Manager's Office

AGENDA: New Business

Recommendation: Approve the Federal Agenda.

Background: Each year, City Departments are asked to submit requests for federal legislative assistance. The City Council was provided with staff's list of requests at its February 24, 2009, Workshop. The Council reviewed the list and discussed adding other issues of importance to the list and then prioritizing the requests. The Federal Legislative Agenda will be provided to the Federal Delegation in March for review and consideration.

Analysis: The Proposed Federal Legislative Agenda contains requests for appropriations relating to rail and surface transportation, drainage, public safety, park and recreation, aviation, flood control and water quality. Based upon the direction provided by the City Council, staff will finalize the 2010 Federal Legislative Program and prepare a document describing the requests. This document will be provided to the Federal Delegation in March 2009. Communication with the Delegation will continue throughout the year to assure that the City's needs are communicated effectively and appropriate information is provided.

Financial Considerations: Some federal requests require local matching funds. Historically, the City has identified a variety of sources to provide local matching funds when necessary. City staff will attempt to provide matching funding as necessary based upon Council approval.

Goal Impact: On January 4, 2006, the City Council adopted five (5) goals for the City of Wichita. They include: Provide a Safe and Secure Community, Promote Economic Vitality and Affordable Living, Ensure Efficient Infrastructure, Enhance Quality of Life and Support a Dynamic Core Area and Vibrant Neighborhoods. The issues in this Proposed Federal Legislative Agenda address all five goals.

Legal Considerations: Should federal funding be secured, contracts and/or memorandums of understanding will be initiated as appropriate.

Recommendation/Action: It is recommended that the City Council approve the 2010 Federal Legislative Program.

City of Wichita
City Council Meeting
March 3, 2009

TO: Mayor and City Council

SUBJECT: CON2008-63 – Conditional Use for outdoor vehicle and equipment sales on property zoned LC Limited Commercial (“LC”); generally located on the northwest corner of Hillside Avenue and 1st Street. (District I)

INITIATED BY: Metropolitan Area Planning Department

AGENDA: Planning (Non-Consent)

MAPC Recommendations: Approve (9-0).

MAPD Staff Recommendations: Deny.

DAB I Recommendation: Deny (6-3-1).



Background: The applicant is requesting a Conditional Use to allow outdoor vehicle and equipment sales on Lots 45 and 47, Jones Subdivision in Chautauqua Addition (site), which are zoned “LC” Limited Commercial. The site is located at the northwest corner of Hillside Avenue and 1st Street. The site was owned by the City of Wichita (2007) and had a vacant free standing business located on it. The applicant bought the site (which had been scraped clean by the City) and paved it over for a parking lot. OCI cited the applicant for constructing the parking lot without a permit. OCI notified the applicant that he needed to submit an approved landscape plan and ADA modifications on the site before a building permit could be issued for the parking lot. This was in April of 2008, and the site is still out of compliance. The applicant currently has a LC zoned car sales lot (CON2005-00002, ZON2005-26) with a limited vehicle repair shop (permitted by right in LC zoning) located south of the site, across 1st Street. The applicant proposes to expand his current pre-owned cars and light trucks sales onto the site. Per the Unified Zoning Code (UZC, Art.III, Sec.III-D, 6(x)), outdoor vehicle and equipment sales may be permitted with a Conditional Use in the LC zoning district.

TF-3 Two-family Residential (TF-3”) zoned single-family residences (built 1910 -1920s) are located west of the site, separated by a 10-foot wide platted alley. There is a clay pipe sewer line in the alley, which was installed in 1911. A cured in place liner was installed for the sewer line in 2004. Development located to the south of the site, across 1st Street and Hillside, includes TF-3 zoned single-family residences (1915-1930s), duplexes (1984) and MF-29 Multifamily Residential (“MF-29”) zoned apartments (1984). The LC zoned applicant’s garage and car sales lot (previously noted), a grocery store, an Ace Hardware store, a dentist office, several free standing single-story retail businesses and a small fast food restaurant with a drive through window are also located south of the site. There is also a GC General Commercial (“GC”) zoned car sales lot on the northwest corner of Douglas Avenue and Hillside. This car sales lot used to be a gas station and was operating prior to the applicant’s current and past Conditional Use requests for car sales lots. A car sales lot is permitted by right in the GC zoning district; UZC, Art.III, Sec.III-D, 6(hh). The properties located east of the site, across Hillside, are developed as an LC zoned apartment, B Multifamily Residential (“B”) zoned office and GO General Office (“GO”) zoned vet clinic and medical. Property abutting the north side of the site is zoned LC and is developed as a small retail shopping strip, housing a liquor store, self serve laundry and other retail. There is small, GO zoned medical and office located north of the LC zoned small retail shopping strip.

Extending the applicant’s car sales lot north, across 1st Street, does not match the redevelopment patterns of this portion of Hillside Avenue, north of 1st. Redevelopment north of 1st, along Hillside, has been a combination of office, medical, retail strips, fast food and a large mixed use Planned Unit Development. Typically, small car sales lots, such as the applicant’s current car sales lot, are continuous and not broken by other developments or public street right-of-way. This proposal is unusual in that it is separated by the applicant’s current car sales lot by 1st, a one way, urban collector. Typically, small car sales lots, such as the applicant’s current car sales lot, had previously been used for other auto related uses, such as a garage. Prior to this site being scraped clean, it had been a floor shop. Using the subject site for parking could provide additional space that would become available on the applicant’s current site for display of cars for sale.

Analysis: DAB I heard this request at their January 5, 2009, meeting. There were protests at the DAB meeting. Protests/concerns included: the traffic the facility would generate and the possible expansion of car sales lots along this portion of Hillside. Planning’s report at the DAB had recommended denial, based on their findings. The report also noted that the MAPC typically supports this type of request based on their past support of expansion of existing businesses, including car sales lots. Therefore, staff had provided 18 conditions to the Conditional Use request for consideration by the MAPC if they considered approval for car sales on the subject site; see the attached resolution. The DAB recommended denial (6-3-1) of the Conditional Use request, as recommended by Planning.

At the January 8, 2009, MAPC public hearing, the MAPC voted 9-0 to approve the requested Conditional Use, subject to the conditions listed in the attached resolution. There were protests at the MAPC meeting.

The protests were generally the same as offered at the earlier DAB meeting. Staff received numerous protests by phone calls, e-mails and writing.

At the end of the two week protest and appeal period, valid protests to the Conditional Use request were filed. These protests total 7.87% per cent of the net land area within the 200 foot protest area. The protest map shows scattered protest outside the 200 foot protest map. A simple majority vote of the City Council members can overturn the protest. However, it will require a 2/3 majority vote of the City Council members to overturn the MAPC's recommendation and to deny the applicant's requested Conditional Use.

Financial Considerations: None.

Goal Impact: Promote Economic Vitality and Affordable Living.

Legal Considerations: The resolution has been reviewed and approved as to form by the Law Department.

Recommendation/Actions:

1. Concur with the findings of the MAPC and approve the Conditional Use, subject to the recommended conditions, with a simple majority vote; or
2. Deny the Conditional Use request by making alternative findings, and override the MAPC's recommendation (it requires a two-third majority vote to override the MAPC's recommendation); or
3. Return the case to the MAPC for further consideration with a statement specifying the basis for the Council's failure to approve or deny the application (simple majority vote required).

RESOLUTION No. _____

A RESOLUTION AUTHORIZING A CONDITIONAL USE TO ALLOW USED CAR SALES, ON APPROXIMATELY 0.15-ACRES ZONED LC LIMITED COMMERCIAL ("LC"), LOCATED ON THE NORTHWEST CORNER OF HILLSIDE AVENUE AND 1ST STREET, IN THE CITY OF WICHITA, SEDGWICK COUNTY, KANSAS, UNDER THE AUTHORITY GRANTED BY THE WICHITA-SEDGWICK COUNTY UNIFIED ZONING CODE, SECTION V-D, AS ADOPTED BY ORDINANCE NO. 44-975, AS AMENDED.

BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS:

SECTION 1. That after receiving a recommendation from the Wichita-Sedgwick County Metropolitan Area Planning Commission, and after said Planning Commission has given proper notice and held a public hearing as provided by law, and under authority granted by Section V-D of the Wichita-Sedgwick County Unified Zoning Code, a Conditional Use to allow used car sales on approximately 0.15-acres zoned LC Limited Commercial ("LC") legally described below:

Case No. CON2008-00063

A Conditional Use Permit to allow used car sales, on approximately 0.15-acres zoned LC Limited Commercial ("LC") described as:

Lots 45 and 47, Jones Subdivision in Chautauqua Addition, Wichita, Sedgwick County, Kansas. Generally located on the northwest corner of Hillside Avenue and 1st Street.

SUBJECT TO THE FOLLOWING CONDITIONS:

1. Obtain all permits and inspection as required by OCI. All development will be per City Code including landscaping, access control, easements, ADA compliance and any other applicable standards.
2. In addition to uses permitted in the "LC" Limited Commercial district, the site shall be limited to the sales of cars and light trucks, as long as it continues to operate as a vehicle repair, limited garage. No sale or rental of trailers, motorcycles or scooters, vehicles or trucks larger than pickups are permitted.
3. No automotive service or repair work shall be done on the site unless it is entirely within a building. No body or fender work shall be permitted without first obtaining "GC" General Commercial zoning.
4. The applicant shall submit a revised site plan for review and approval by the Planning Director, prior to the issuance of a building permit, per City Standards, within 6 months of approval by the MAPC or the City Council. The site will be developed according to the revised site plan. The site plan will be prepared and stamped by a licensed surveyor.
5. The applicant shall install and maintain landscaping in accordance with the landscape plan submitted with the revised site plan, within six months of approval by the MAPC or

the City Council. The landscaping plan will be reviewed and approved by the Planning Director, prior to issuance of any permits. The applicant will remove all asphalt needed to come into compliance with the Landscape Ordinance and to ensure that development does not encroach into right-of-way.

6. A parking barrier, such as a heavy rail type, shall be installed along all perimeter boundaries adjacent to streets, except at driveway entrances or where fences are erected, to ensure that parked vehicles do not encroach onto public right-of-way.
7. No temporary display signs are permitted, including the use of commercial flags, banners, portable signs, pennants, streamers, pinwheels, string lights, search lights, bunting and balloons. No signs allowed on the west side of the building.
8. There shall be no use of elevated platforms for the display of vehicles. All vehicles for sale or for repair must be on a concrete, asphalt or an approved all weather surface.
9. No outdoor amplification system shall be permitted.
10. No outside storage of salvaged vehicles or vehicles waiting for repair shall be permitted in association with this use. Outside storage of parts, including tires, associated with the car repair, limited, operation shall be within a 6-foot solid screened area.
11. The lighting standards of Section IV-B.4 of the Unified Zoning Code shall be complied with. No string-type lighting shall be permitted. Outside pole lighting shall be no taller than 12 feet, including the base, and directed onto the site and away from the residential development abutting the west side of the site.
12. The applicant shall erect and maintain gated, solid six-foot screening along the site's western and northern property lines. The height of the fence will be less than 6 feet if needed to allow a clear line of sight along street frontage.
13. All trash receptacles, oil containers or any similar type of receptacles for new or used petroleum products or trash shall have solid 6-foot screening around it. The gate shall be of similar materials as the screening.
14. Dedication by separate instrument of access control closing all but one entrance onto Hillside Avenue. The entrances shall be reviewed and approved by the Traffic Engineer. This must be provided to the City, prior to the Conditional Use being finalized. The applicant shall guarantee the closure of all but the approved entrances according to City standards.
15. Dedication by separate instrument of 5 feet of easement for the length of the west side of the subject site. This must be provided to the City, prior to the Conditional Use being finalized.
16. All improvements shall be completed within 6 months of the approval of the Conditional Use by the MAPC or the City Council. No selling of cars shall be allowed until all permits have been acquired and all improvements to the site have been made.
17. The site shall be developed and operated in compliance with all federal, state, and local rules and regulations.

18. If the Zoning Administrator finds that there is a violation of any of the conditions of the Conditional Use, the Zoning Administrator, in addition to enforcing the other remedies set forth in Article VIII of the Unified Zoning Code, may, with the concurrence of the Planning Director, declare that the Conditional Use is null and void.

SECTION 2. That upon the taking effect of this Resolution, the notation of such Conditional Use permit shall be shown on the "Official Zoning District Map" on file in the office of the Planning Director of the Wichita-Sedgwick County Metropolitan Area Planning Department.

SECTION 3. That this Resolution shall take effect and be in force from and after its adoption by the Governing Body.

ADOPTED BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS, this date

Carl Brewer, Mayor

ATTEST:

Karen Sublett, City Clerk

Approved as to form:

Gary E. Rebenstorf, City Attorney

EXCERPT OF THE JANUARY 8, 2009 MAPC HEARING

Case No.: CON2008-63 – Howard Hancock (applicant); Bob Kaplan (agent) Request City Conditional use for outdoor vehicle and equipment sales.

Lots 45 and 47 of the Jones Subdivision in Chautauqua Addition, Wichita, Sedgwick County, Kansas generally located at the northwest corner of Hillside Avenue and 1st Street.

BACKGROUND: The applicant is requesting a Conditional Use to allow “outdoor vehicle and equipment sales” on Lots 45 and 47, Jones Subdivision in Chautauqua Addition (site), which are zoned “LC” Limited Commercial. The site is located at the northwest corner of Hillside Avenue and 1st Street. The site was owned by the City of Wichita (2007), and had a vacant free-standing business located on it. The applicant bought the site (which had been scraped clean by the City), and paved it for a parking lot. The Office of Central Inspection (OCI) cited the applicant for constructing the parking lot without a permit. OCI notified the applicant that the parking lot did not meet ADA standards, and that he needed to obtain an approved landscape plan before a building permit could be issued to bring the parking lot into compliance. The notice of violations was issued in April of 2008, and, as of the writing of this report, the lot is not in compliance. The applicant currently owns a LC zoned car sales lot (CON2005-00002, ZON2005-26) developed with a “vehicle repair, limited” shop (permitted by-right in LC zoning) located south of the site, across Hillside. The applicant proposes to expand the sale of pre-owned cars and light trucks from his current site onto the subject site, which is separated from the existing car sales lot by 1st Street. Per the Unified Zoning Code (UZC, Art.III, Sec.III-D, 6(x)), “outdoor vehicle and equipment sales” may be permitted with a Conditional Use in the LC zoning district.

TF-3 Two-family Residential (“TF-3”) zoned single-family residences (built 1910 -1920s) are located west of the subject site, one of which is owned by the applicant. These homes are separated from the subject site by a 10-foot wide platted alley. There is a clay pipe sewer line in the alley, which was installed in 1911. A cured in-place liner was installed in 2004. Development located to the south of the site, across 1st Street and Hillside includes TF-3 zoned single-family residences (1915-1930s), duplexes (1984) and MF-29 Multifamily Residential (“MF-29”) zoned apartments (1984). The applicant owns the residence located immediately west of his existing repair and sales center. Also located south of the subject site, across 1st, are the LC zoned applicant’s garage and car sales lot, a grocery store, an Ace Hardware store, a dentist office, several free standing single-story retail businesses and a small fast food restaurant with a drive through window. There is also a GC General Commercial (“GC”) zoned car sales lot on the northwest corner of Douglas Avenue and Hillside. A car sales lot is permitted by right in the GC zoning district; UZC, Art.III, Sec.III-D, 6(hh). This GC zoned car sales lot used to be gas station, and was operating prior to the applicant’s current and past Conditional Use requests for vehicle sales. The properties located east of the subject site, across Hillside, are developed as an LC zoned apartment, a B Multi-family Residential (“B”) zoned office and a GO General Office (“GO”) zoned vet clinic and medical office. Property abutting the north side of the site is zoned LC, and is developed as a small retail shopping strip housing a liquor store, self-serve laundry and other retail. There is small, GO zoned medical office located north of the LC zoned small retail shopping strip.

The applicant’s site plan (exhibit #1) shows the existing paved lot with an existing drive onto 1st Street, cedar fence along the north and west sides and a two-inch rail barrier around its street frontage. The site plan shows no landscaping, lighting, or proposed signage. A Warranty Deed, executed as part of the sale of the subject site, also retained 30 feet of right-of-way along the site’s Hillside frontage; Film/Page 28964426, recorded 04-02-2008, exhibit #2. This retention of 30 feet of right-of-way reduced the subject site’s depth to 100 feet. The site plan shows the site to be 104 feet deep, but notes that all dimensions are approximate and should be verified by a survey; it appears that the paved lot encroaches into the Hillside Avenue right-of-way.

CASE HISTORY: As noted above, the subject property is platted as Lots 45 and 47, Jones Subdivision in Chautauqua Addition, which was recorded with the Register of Deeds March 9, 1887. The site was owned by the City of Wichita and had a vacant free standing business located on it. The City approved the sale of the site (which had been scraped clean by the City) to the applicant at their February 26, 2008, meeting. The minutes from that meeting (exhibit #3) notes that the applicant proposed to use the site for additional parking (not a car sales lot) for his existing business (limited car repair and car sales). The Warranty Deed (Film/Page 28964426, recorded 04-02-2008), prohibits certain uses on the site, but car sales was not one of the prohibited uses; see exhibit #2. The Warranty Deed also retained 30 feet of right-of-way along the site's Hillside frontage. Subsequently, the applicant paved over the site, put up the cedar fence and the two-inch pipe rail barrier for a parking lot. OCI cited the applicant for constructing the parking lot without a permit. OCI notified the applicant that he needed to obtain an approved landscape plan, and the site needs to be brought into compliance with ADA requirements, access control and other City Standards before a building permit could be issued for the parking lot. The notice of violations was issued in April of 2008, and, as of the writing of this report, the site is still out of compliance.

ADJACENT ZONING AND LAND USE:

NORTH:	LC, GO, B	Retail shopping strip, medical, office, fire station
SOUTH:	LC, GC	Building supply, free standing retail, fast food with drive-through window, medical, grocery, car sales lots, garage
EAST:	LC, GO, B	Apartments, medical, vet clinic
WEST:	TF-3	Single-family residence

PUBLIC SERVICES: The subject site currently has a permitted, shared access to Hillside Avenue, a 4-lane arterial street, with the abutting northern property. It also has an existing drive onto 1st Street, a two-lane, one-way east, urban collector. If approved, the Traffic Engineer requests the dedication of complete access control onto 1st Street. Current traffic volumes at this intersection are approximately 22,280 vehicles per day along Hillside Avenue, and 4,808 – 5,184 vehicles per day along 1st Street. The 2030 Transportation Plan estimates that traffic volumes at the intersection will increase to approximately 25,000 vehicles per day along Hillside Avenue, and approximately 5,000 – 7,000 vehicles per day along 1st Street. The 2030 Transportation Plan recommended that Hillside Avenue become a five-lane arterial street. Improvements along this section of Hillside Avenue were recently completed. Municipal water and sewer services are currently provided to the subject property. The Water and Sewer Department is requesting dedication of 5 feet of easement along the west side of the site, running parallel to the platted 10-foot wide alley, which has a clay pipe sewer line (installed 1911). A cured in-place liner was installed in 2004. Current minimum standard for a sewer easement is 20 feet wide.

CONFORMANCE TO PLANS/POLICIES: The 2030 Wichita Functional Land Use Guide of the Comprehensive Plan identifies this site as appropriate for “Local Commercial” development. The “Local Commercial” category includes commercial, office and personal service uses that do not have a regional draw. The Commercial Locational Guidelines of the Comprehensive Plan recommend that commercial sites should be located adjacent to arterials and should have site design features which limit noise, lighting, and other activity from adversely impacting surrounding residential areas. Additionally, the Commercial Locational Guidelines of the Comprehensive Plan recommend that commercially-generated traffic should not feed directly onto local residential streets.

Commercial Locational Guideline #6 specifically recommends that auto sales lots and other types of infrequent purchase or non-neighborhood serving commercial uses be guided to areas containing similar uses, and away from neighborhood commercial uses. The closest car sales lot other than the applicant's

current sales lot is located at the northeast corner of Hillside and Douglas. Both the applicant's current sales lot and the car sales at Hillside and Douglas are on sites that had been service stations in the past, or were properties that abutted these service stations. The current subject site was previously a flower shop, prior to that a restaurant and never abutting an auto related business. Both of these cited existing car sales sites not broken/disrupted by other developments or right-of-way and both are located south of 1st Street. The applicant's request extends car sales beyond the Douglas - 1st Street block and locates it on a site that is separated from the applicant's current car sales lot by 1st Street, a one-way urban collector.

In the past, the MAPC has identified smaller car sales lots as being more of a local retail establishment in their nature, as opposed to the cluster of larger car sales lots located primarily along Kellogg Avenue and Broadway Avenue, which are more regional in their nature. The MAPC has also recommended that buildings that had, in the past, been used for automobile activities, such as gas stations, be considered as possible sites for car sales. The subject site was developed with a small, free standing retail building used for a restaurant and flower shop prior to its demolition.

The site is located within the Wichita Central Northeast Area Plan (adopted by WCC September 2005), which identifies issues and goals within the area. Issues noted in the Northeast plan include the poor appearance of the area, the need for redevelopment, reinvestment, cleanup and code enforcement on vacant and deteriorating storefronts and housing. The City purchased the subject site for the Hillside improvements, scraped it clean and sold it for redevelopment. The minutes of the Council meeting, when the site was sold, noted that the applicant proposed to use the subject site for additional parking for his current car repair and car sales business, which is permitted by right in the site's existing LC zoning. Redevelopment north of 1st Street, along Hillside, has been a combination of office, medical, retail, fast food and the larger mixed use College Hill Planned Unit Development. Wesley hospital is the engine for development in this area. In those developments that were built on scraped clean sites, development was per City Code and permits, included landscaping per the Landscape Ordinance, observed access control requirements, easements, etc., and were in character with the goal of providing neighborhood services and uses that encourage reinvestment along Hillside and the surrounding neighborhoods.

RECOMMENDATION: Extending the applicant's car sales lot north, across 1st Street does not match the redevelopment patterns of this portion of Hillside Avenue, north of 1st Street. Redevelopment north of 1st Street, along Hillside, has been a combination of office, medical, retail strips, fast food and a large mixed use Planned Unit Development. Typically, small car sales lots, such as the applicant's current car sales lot, are continuous and not broken by other developments or right-of-way. This proposal is unusual in that it is separated by the applicant's current car sales lot by 1st, a one way, urban collector. Typically, small car sales lots, such as the applicant's current car sales lot, had previously been used for other auto related uses, such as a garage; this site has not. Based on the information available prior to the public hearing, MAPD staff recommends the application be **DENIED**.

In general, this recommendation is based on the principles that the proposed use is not characteristic of the type of redevelopment occurring north of 1st Street along Hillside; that the site can be used for parking to support the applicant's existing business as currently zoned (or for vehicle repair), freeing up additional space on the applicant's current site for cars for sale; and the segment of Hillside from U.S. 54 to Central is a significant entry way to one of Wichita's major medical centers bordered by older traditional residential neighborhoods where outdoor uses are significantly limited. The City has backed redevelopment efforts in the Central and Hillside area with tax increment financing, and with CIP improvements to Hillside. The expansion of vehicle sales along this segment of Hillside is not a complementary use to those goals and efforts.

The staff's recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: The character of the neighborhood is predominately medical services, office, retail and some multi-family along the Hillside corridor, anchored by the Wesley Hospital complex on the north end. Outdoor display and storage uses are rare in this general area, and is in fact confined to the area south of 1st Street. Office type development will remain in the area as long as Wesley Hospital remains the economic engine for the area. The south end of the corridor (south of 1st Street) has the area's only two car sales lots, including the applicant's and his car repair shop, which are the only car repair shop in the immediate area. This segment of Hillside from U.S. 54 to Central is a significant entry way to one of Wichita's major medical centers bordered by older traditional residential neighborhoods where outdoor uses are significantly limited. Zoning in the area is a mix of GC, LC, GO, B and a PUD.
2. The suitability of the subject property for the uses to which it has been restricted: The property is zoned LC which permits a wide range of retail, office and residential uses, by-right. The property is suitable for the uses to which it has been restricted. Included in those uses are additional parking for the applicant's current businesses of car repair and car sales, as long as the site comes into compliance. The additional parking on the subject site would allow more space to display cars for sale on the applicant's current car sales site.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: Extending car sales north of 1st Street is out of character with the type of redevelopment that has occurred north of 1st Street. The character of the neighborhood is predominately medical services, office, retail and some multi-family along the Hillside corridor, anchored by the Wesley Hospital complex on the north end. Introduction of a car sales lot into an area can lead to other outdoor sales, display or storage type of uses that can detrimentally affect nearby residential uses. Outdoor sales, display or storage type of uses along are currently confined to this area between Douglas and 1st. The applicant owns the TF-3 zoned single-family residential properties abutting or adjacent to the west sides of the current car sales/car repair site and the subject site. A zone change and Conditional Use request on these properties could allow another expansion of the applicant's car sales lots, encroaching into the abutting residential neighborhoods.
4. Conformance of the requested change to adopted or recognized Plans/Policies: Commercial Locational Guideline #6 recommends that auto sales lots and other types of infrequent purchase or non-neighborhood serving commercial uses should be guided to areas containing similar uses, and away from neighborhood commercial uses. Currently car sales lots along Hillside are located between Douglas Avenue and 1st Street; there are no car sales or auto repair located north of 1st Street. Both the applicant's current sales lot and the GC zoned car sales lot are on sites that had been service stations in the past. Both of these sites are neither disrupted nor broken by other developments or right-of-way. The applicant's request extends car sales beyond 1st Street and locates it on a site that is separated from the applicant's current car sales lot by 1st Street, a one-way urban collector. The site is located within the Wichita Central Northeast Area Plan (adopted by WCC September 2005), which identifies issues and goals within the area. Concerns noted by the Northeast plan include the poor appearance of the area, the need for redevelopment, reinvestment, cleanup and code enforcement on vacant and deteriorating storefronts and housing. Despite the MAPC's unofficial policy of supporting existing businesses, the request is not consistent with adopted plans and policies.
5. Impact on Community Facilities: All public facilities are available, but there is a need for an additional 5 feet of easement along the subject site's west side. Existing road facilities are adequate, but there is a need for dedication of complete access control along the site's 1st Street frontage and shared access along the site's north side on its Hillside frontage.

However if the MAPC supports this request, based on their past support of expansion of existing businesses, including car sales lots, staff recommends the following conditions:

1. Obtain all permits and inspection as required by OCI. All development will be per City Code including landscaping, access control, easements, ADA compliance and any other applicable standards.
2. In addition to uses permitted by right in the “LC” Limited Commercial district, the site shall be limited to the sale of cars and light trucks, as long as the sale of vehicles is associated with a “vehicle repair, limited” garage. No sale or rental of trailers, motorcycles or scooters, vehicles or trucks larger than pickups are permitted.
3. No automotive service or repair work shall be done on the site unless it is entirely within a building. No body or fender work shall be permitted without first obtaining “GC” General Commercial zoning.
4. Prior to the issuance of building permits, the applicant shall submit a revised site plan for review and approval by the Planning Director of Planning. The site plan shall be submitted within six months of approval by the MAPC or the City Council. The site will be developed according to the revised site plan. The site plan will be prepared and stamped by a licensed surveyor.
5. Within six months of final approval, the applicant shall install and maintain landscaping in accordance with an approved landscape plan.
6. A parking barrier, such as a heavy rail type, shall be installed along all perimeter boundaries adjacent to streets, except at driveway entrances or where fences are erected, to ensure that parked vehicles do not encroach onto public right-of-way.
7. No temporary display signs are permitted, including the use of commercial flags, banners, portable signs, pennants, streamers, pinwheels, string lights, search lights, bunting and balloons. No signage is permitted on the west side of any buildings, and there shall not be any signage along 1st Street frontage.
8. There shall be no use of elevated platforms for the display of vehicles. All vehicles for sale or for repair must be on a concrete, asphalt or an approved all weather surface.
9. No outdoor amplification system shall be permitted.
10. No outside storage of salvaged vehicles or vehicles waiting for repair shall be permitted in association with this use. Outside storage of parts, including tires, associated with the car repair, limited, operation shall be within a 6-foot solid screened area.
11. The lighting standards of Section IV-B.4 of the Unified Zoning Code shall be complied with. No string-type lighting shall be permitted. Outside pole lighting shall be no taller than 12 feet, including the base, and directed onto the site and away from the residential development abutting the west side of the site.
12. The applicant shall erect and maintain gated, solid six-foot screening along the site’s western and northern property lines. The height of the fence will be less than 6 feet if needed to allow a clear line of sight along street frontage.

13. All trash receptacles, oil containers or any similar type of receptacles for new or used petroleum products or trash shall have solid 6-foot screening around it. The gate shall be of similar materials as the screening.
14. The applicant shall dedicate, by separate instrument, access control closing all but one entrance onto Hillside Avenue. The entrance shall be reviewed and approved by the Traffic Engineer. The dedication must be provided to the City, prior to the Conditional Use being finalized. The applicant shall guarantee the closure of all but the approved entrances according to City standards.
15. Dedication by separate instrument of 5 feet of easement for the length of the west side of the subject site. This must be provided to the City, prior to the Conditional Use being finalized.
16. All improvements shall be completed within 6 months of the approval of the Conditional Use by the MAPC or the City Council. No selling of cars shall be allowed until all permits have been acquired and all improvements to the site have been made.
17. The site shall be developed and operated in compliance with all federal, state, and local rules and regulations.
18. If the Zoning Administrator finds that there is a violation of any of the conditions of the Conditional Use, the Zoning Administrator, in addition to enforcing the other remedies set forth in Article VIII of the Unified Zoning Code, may, with the concurrence of the Planning Director, declare that the Conditional Use is null and void.

BILL LONGNECKER, Planning Staff presented the Staff Report.

MCKAY asked the square footage of the lot and what else can be located on this piece of property and still meet the parking requirements.

LONGNECKER said the lot is 5,000 square feet, 50-foot by 100-foot. He said it can be used for anything permitted by right under LC zoning within the confines of the size of the site. He said the area could be used as a parking lot. He said using the site for parking would free up more area for the display of cars for sale on the applicant's existing Conditional Use site for car sales located south, across of 1st Street.

HENTZEN asked what was on the lot previously.

LONGNECKER said that previously a flower shop and before that a restaurant had been located at the site, all these existed on the site had been before it had been bought by the City, who in turn sold it to the applicant. He referred to the warranty deed, which removed 30 feet from the original 130-foot (x) 50-foot lots for right-of-way along the site's Hillside frontage. This 30-foot for right-of-way gave the site its current 100-foot (x) 50-foot size and configuration.

HILLMAN said it looks like the lot was developed and fenced before proper approval was given.

LONGNECKER said there are development considerations on this property that still need to be resolved. He noted that the site plan said that all dimensions on the site plan needed to be confirmed by a survey. He said this was an important consideration because the site plan showed the site to be 4 feet deeper than what it was, based on the plat and the 30 feet of right-of-way being retained for the Hillside frontage. Those 4 feet shown on the site plan meant that the site was either in the Hillside or alley right-

of-way. He referred to the case history, where OCI cited the applicant for paving without permit and being out of compliance in regards to landscaping, ADA compliance and other City Standards, including possible drainage issues. He noted that these considerations were the same whether the site was being used for parking or, if approved, a car sales lot. He noted that until these considerations were resolved the applicant could not use the site for parking or car sales. He also reported that DAB I denied the application by a vote of 6-3-1.

BOB KAPLAN, AGENT FOR THE OWNER/APPLICANT commented that from his own experience he knows that the Planning Commission is not overly concerned about what another board did or did not recommend and that they make their own decisions. He commented that at the time his client purchased the lot there was no prohibition against car sales or he would not have bought it. He referred to a handout which was a booklet with pictures of the lot and surrounding area. He commented that his client is not in violation of any ordinance because they have not used the property. He said his client has paved the property, screened it, and put up a barricade. He said his client can legally use the property to park cars on whether the MAPC grants or denies the conditional use request. He commented that there was commercial zoning within 600 feet of the existing property and that this site is not across the arterial. He said there has been much confusion about this site. He commented that Kurt Schroeder from OCI informed them that they must have a landscape plan and provide one handicapped parking stall. He added that his client would agree to the 18 conditions listed in the Staff Report, in addition to agreeing to convey an easement the City has requested for additional sewage. He said a 50' X 100' lot is a postage stamp and said you can't put building on it and you can't do much with it in today's market. He said the 5,000 square feet will accommodate expansion of his client's car sales business. He commented that the business is a low key operation and that they don't operate weekends or nights. He said basically it is an automobile repair business with a few cars offered for sale. He said his client would like to place 11-12 automobiles on this small lot. He said his client has done a nice job of cleaning up this corner and referred to photos provided with the hand out. He also mentioned that the house to the west belongs to the applicant. He said it is a better deal for the City to have this lot under a Conditional Use permit and regulated. He concluded by stating that he didn't follow staff's rationale on used car lots. He said the applicant was present to answer any questions on the proposal.

MITCHELL asked how the applicant would comply with City landscape requirements, since the rail came out to the property line on both Hillside and First Street. He also asked Mr. Longnecker, what the landscape requirement was.

KAPLAN stated that his client has a registered architect and the site plan submitted with the application was part of a purchase negotiation with the City. He commented that a revised site plan will be provided in compliance with City requirements. He said they will probably have to relocate the rail/barrier.

LONGNECKER commented that the landscape requirement along a collector and an arterial is figured on a formula that is the average lot depth, which gives a square foot factor for the landscape street frontage. He also noted that landscaping would have to be provided on the west side where the site abuts residential zoning. He said the railing would probably have to be moved to accommodate the landscaping.

MITCHELL asked if the landscaping requirement can be waived.

LONGNECKER said it could be waived via the proper process, but noted OCI had cited the applicant for constructing a parking lot without a permit back in April. He said it was noted that the applicant needed to obtain an approved landscape plan and the site needs to be brought into compliance with ADA requirements and access control and other City Standards before a building permit could be issued for the

parking lot. He again stated that the site could not be used for even parking until it was brought into compliance.

MILLER said the only way the landscaping can be waived is through the Board of Zoning Appeals process. He added that the Planning Director has the authority to approve an alternate plan that is less than what is required; however, the Planning Director cannot waive the requirement completely.

ANN MCCARTOR, 3110 EAST FIRST STREET commented that she owned the second residential house west of the lot. She mentioned page 3 of the Staff Report noting that Mr. Hancock was in violation of City code and non compliant. She mentioned the Water and Sewer Department's request for 5 feet of easement along the west side fence running parallel to the 10 foot wide alley. She said it's actually 15 feet on the other side of the fence, which is taking 15 feet off the back of the property which is completely covered with asphalt and circled with a fence. She said Mr. Hancock has already paved over some type of easement. She also mentioned discussion concerning establishing access from Hillside onto the property so the access on First Street can be removed. She said the property owner to the north of the property owns that property and access and she understands that he has not approved access to Mr. Hancock's property through his property. She said the only access can be from Hillside at this point. She added that she understood that property access had to be at least 200 feet from the intersection at Hillside. She also mentioned that Mr. Hancock erected a fence between his residential property and her property, without a survey and they believe the fence is on their property, in addition to attaching the fence to their garage without permission. She said she believes this is just more evidence of Mr. Hancock's disregard for rules and regulations. She also mentioned that he dug a trench before he owned the residence to the west of the car lot property. She said not being in compliance and ignoring rules and regulations is not a good way to do business or be a good neighbor, in her opinion. She also mentioned possible expansion of his business down First Street. She concluded by saying that she is opposed to this proposal.

KAPLAN commented that they understand that they will have to landscape the property, so he believes that is a non-issue. He said they have also offered the easement requested by the City. He said they also have shared access along Hillside. He commented that his applicant has cleaned up the property, fenced it and put up the barricade, which may have to be relocated. He said his client hired Lafarge to pave the lot and that it was Lafarge who did not get the required permit.

MITCHELL asked if the client was occupying any or all of the 5 feet immediately east of the alley, which is the requested easement dedication.

HOWARD HANCOCK, APPLICANT said there was a misunderstanding on the alley and that there is a berm there. He said the fence is on the property line and that there was actually a steel peg located there, on the old platted property line. He said he has been in business at this location for 10 years. He said he maintains the property impeccably. He said he bought and fixed up the house and added that he did get permission from Norma to attach the fence to her garage. He said one of the reasons they sold the house to him was because the water line needed to be repaired and added that he got permission to fix that also. He referred to pictures of what the lot looked like before he purchased the property including abandoned cars which he got towed, refuse and debris.

MOTION: To give the applicant an additional one minutes to speak.

HILLMAN moved, **MITCHELL** seconded, and the motion carried (9-0).

He said he wants the neighborhood to be improved. He said as soon as he acquired the lot he wanted to start improving it – pave it, clean it up. He said whatever he needs to do to comply with codes or zoning

or permits he will be glad to do. He said he hired Lafarge to do what they needed to do, including pulling permits if required. He said he had no objections to doing whatever it takes to be legal.

HILLMAN asked the applicant if he had plans to utilize the property behind the existing automotive operations, the home across the street, or the two homes he could potentially own across the street.

HANCOCK said he didn't have plans for expansion at this time. He said the homes were purchased for investment and rental property. He said the house has been extensively improved and that there was no way he was going to tear the house down to expand the parking lot. He said years from now when he retires someone may want to buy the property and put up a medical building, that was possible. He said he did not see expanding his car lot back to the homes.

MITCHELL asked if the applicant was willing to agree to the 18 conditions listed in the Staff Report.

HANCOCK said yes.

FOSTER asked if there was an encroachment onto the alley by the fence.

LONGNECKER said at this point, staff can't tell because they don't have an accurate survey. He said the alley itself is only 10-foot wide and that it was platted back in 1887. He said any site plan provided by the applicant would have to be prepared and stamped by a licensed surveyor, which would confirm if the site was confined to the applicant's property.

MITCHELL commented that fences are permitted in easements.

LONGNECKER clarified that a platted alley is public right-of-way.

MOTION: To approve subject to staff's conditions attached to staff's second/alternate recommendation to approve (staff's first recommendation is to deny).

MITCHELL moved, **ANDERSON** seconded the motion, and it carried (9-0).



INTEROFFICE MEMORANDUM

TO: Wichita City Council
MAPC Members

FROM: LaShonda Porter, Neighborhood Assistant, District 1

SUBJECT: CON2008-00063

DATE: January 23, 2009

On Monday, January 5th, the District Advisory Board (DAB) for Council District 1 considered the request for a conditional use permit to allow outdoor vehicle and equipment sales generally located at the northwest corner at Hillside and 1st Street (201 N. Hillside).

The Board members and citizens present had the following concerns:

- the size of the lot for its intended use,
- increased traffic,
- number of cars that would be permitted to park on the lot,
- the location of the alleyway, and distance between the business and homes
- how sales would be conducted on the lot
- what would occur Mr. Hancock no longer owned the property and what could be put on the lot.

The agent and owner were present and provided the Board with information regarding the property and how the owner currently has the legal right to park vehicles on the property, he just would not be able to sell them. He also noted that when the City deeded the applicant the property they did not exclude this usage so this should not be an issue now.

DAB members voted 6-3-1 to recommend denial of this request. *Debra Miller-Stevens abstained from the vote.*

**City of Wichita
City Council Meeting
March 3, 2009**

TO: Mayor and City Council

SUBJECT: VAC2008-00039 - Request to vacate a portion of a platted street right-of-way; generally located on the west side of West Street and north of Zoo Boulevard. (District VI)

INITIATED BY: Metropolitan Area Planning Department

AGENDA: Planning (Consent)

Staff Recommendation: Approve.

MAPC Recommendation: Approve (unanimously).

Background: The applicant is requesting the vacation of the platted 11th Street right-of-way (ROW) located between West Street (east side), the Railroad ROW (west side), Lot 2, Gilberts Addition (south side) and an unplatted tract (north side). This 30-foot wide, half street portion of 11th Street is currently a paved parking lot being used by the applicant's business, which abuts the ROW's north side. The parking lot was in place when the applicant bought the business. The vacation of the platted 11th Street ROW, to remove the parking lot from ROW, was a condition of the applicant's Conditional Use, (CON2008-55); a boarding kennel approved by the MAPC on November 2, 2008. There is an improved entrance to this portion of the parking lot/11th Street onto West Street. There are no utilities, manholes, sewer or water lines located in the subject ROW. This portion of 11th Street will never cross the Railroad ROW it abuts on its west side since the West Street and Zoo Boulevard intersection provides that crossing of the Railroad ROW. This portion of 11th Street was platted on the Gilberts Addition, which was recorded with the Register of Deeds on December 16, 1950.

Analysis: The MAPC voted (10-0) to approve the vacation request. No one spoke in opposition to this request at the MAPC's advertised public hearing or its Subdivision Committee meeting. No written protests have been filed.

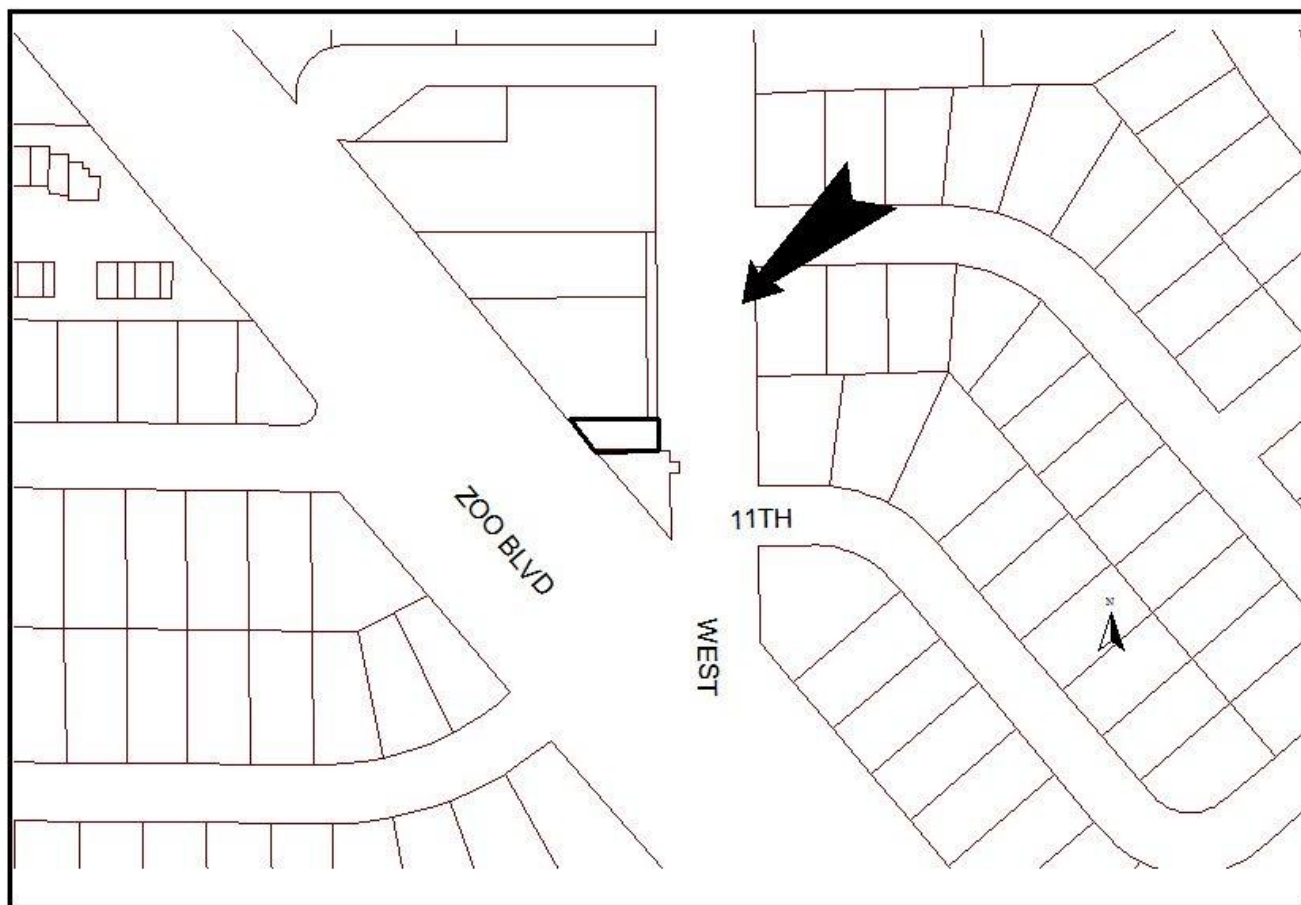
Financial Considerations: None.

Goal Impact: Ensure efficient infrastructure.

Legal Considerations: A certified copy of the Vacation Order, dedication by separate instruments of right-of-way, and cross lot access will be recorded with the Register of Deeds.

Recommendation/Actions: Follow the recommendation of the Metropolitan Area Planning Commission and approve the Vacation Order, and authorize the necessary signatures.

Attachments: Dedication by separate instruments of right-of-way and cross lot access.



City of Wichita
City Council Meeting
March 3, 2009

TO: Mayor and City Council Members

SUBJECT: DED 2009-05 -- Dedication of Street Right-of-Way and DED 2009-06 -- Dedication of Access Control south of Harry and the west side of 127th Street East. (District II)

INITIATED BY: Metropolitan Area Planning Department

AGENDA ACTION: Planning (Consent)

Staff Recommendation: Accept the Dedications.

Background: These Dedications are associated with Lot Split Case No. SUB 2009-01 (McEvoy Addition) and are for ten feet of street right-of-way and for access control, except for one opening, along 127th Street East.

Analysis: None.

Financial Considerations: None.

Goal Impact: Ensure Efficient Infrastructure.

Legal Considerations: The Dedications will be recorded with the Register of Deeds.

Recommendations/Actions: It is recommended that the City Council accept the Dedications.



DEDICATION

KNOW ALL MEN BY THESE PRESENTS:

That for and in consideration of good and valuable considerations, the receipt of which is hereby acknowledged, the undersigned, Jay W. Johnson and Bonnie A. Johnson, owners of the following described real estate in Sedgwick County, Kansas, to wit:

The east 10 feet of Lot 5, Block D, Mc Evoy Addition, Sedgwick County, Kansas,

do hereby dedicate the above described real estate to the public for street purposes.

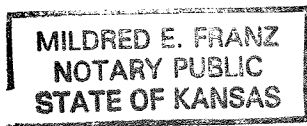
EXECUTED this 4th day of February, 2009.

Jay W. Johnson
Jay W. Johnson

Bonnie A. Johnson
Bonnie A. Johnson

STATE OF KANSAS)
) SS
SEDGWICK COUNTY)

The foregoing instrument acknowledged before me this 4th day of February, 2009, by Jay W. Johnson and Bonnie A. Johnson.



Mildred E. Franz, Notary Public
DED 2009-05
CBS # 503 2009-01

My appointment expires 02-13-2011

DEDICATION OF ACCESS CONTROL

KNOW ALL MEN BY THESE PRESENTS:

That for and in consideration of the sum of One Dollar (\$1.00) and other good and valuable considerations, the receipt of which is hereby acknowledged, the undersigned, Jay W. Johnson and Bonnie A. Johnson, being the owners of the following described real estate in Sedgwick County, Kansas, to wit:

Lot 5, Block D, Mc Evoy Addition, Sedgwick County, Kansas

do hereby transfer and convey to the City of Wichita, all abutter's rights of access, ingress, and egress to said property from or to 127th St. E., over and across the east line of the above-described property; to have and to hold the same forever. It being understood that this conveyance is a covenant running with the land and prohibits all subsequent owners thereof and all members of the public from entering upon said property from 127th St. E. except for **two** openings along 127th St. E. as shown on the attached "Exhibit A".

Executed this 4th day of February, 2009.

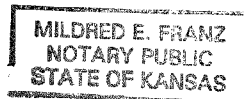
Jay W. Johnson
Jay W. Johnson
Bonnie A. Johnson
Bonnie A. Johnson

STATE OF KANSAS)
) SS
COUNTY OF SEDGWICK)

BE IT REMEMBERED, that on this 4th day of February, 2009, before me, the undersigned, a Notary Public, in and for the County and State aforesaid, came, Jay W. Johnson and Bonnie A. Johnson, who are personally known to me to be the same person who executed the within instrument of writing and such person duly acknowledged the execution of the same.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal the day and year above written.

SEAL

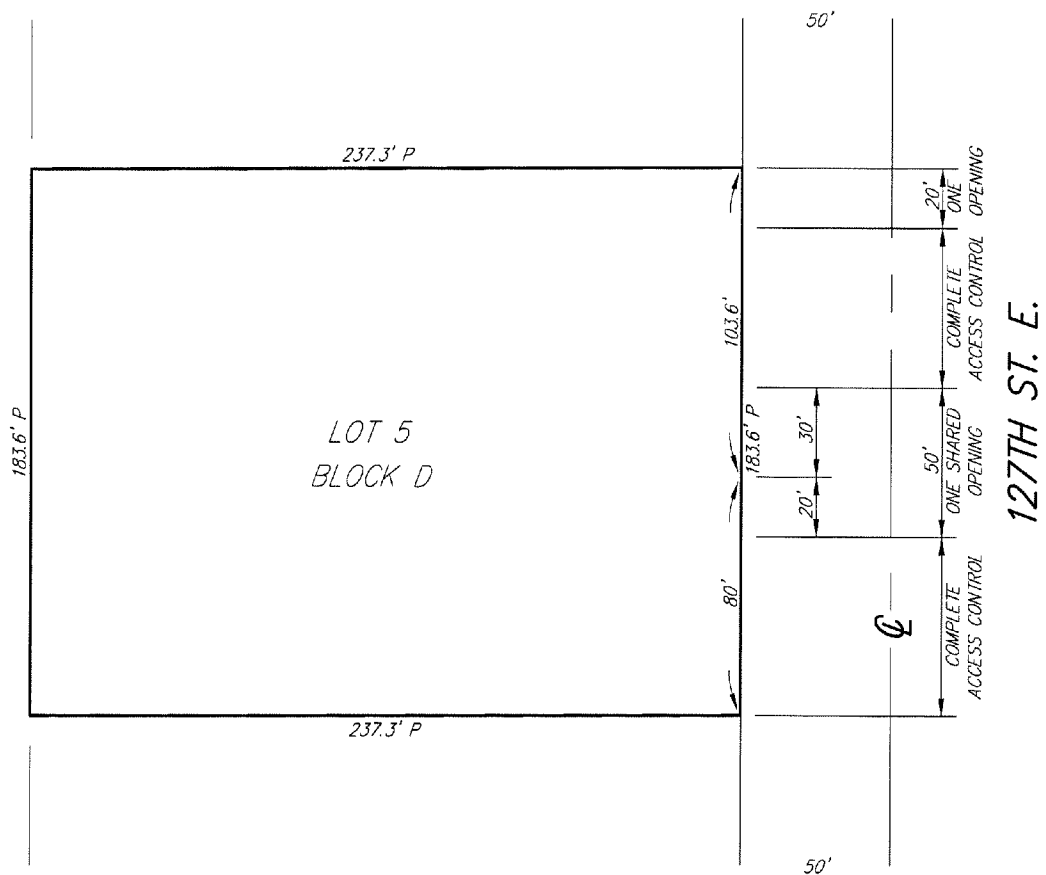


Mildred E. Franz
Notary Public

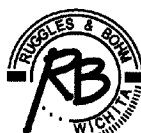
DED 2009-06
(43# SUB2009-01)

(My Commission Expires: 02-13-2011)

EXHIBIT A



1" = 50'



139

DWG FILE: EXHIBIT A
PROJECT NO. 3386L
DECEMBER 29, 2008

Ruggles & Bohm, P.A.

Engineering, Surveying, Land Planning

924 North Main
Wichita, Kansas 67203
www.rbkansas.com

(316) 264-8008
(316) 264-4621 fax
E-mail: info@rbkansas.com

City of Wichita
City Council Meeting
March 3, 2009

TO: Wichita Airport Authority

SUBJECT: Armstrong|Shank Advertising Agency Contract – Approve Annual Budget and Extend Contract

INITIATED BY: Department of Airports

AGENDA: Wichita Airport Authority

Recommendation: Approve the budget for 2009, and extend the contract an additional year.

Background: It is the policy of the Wichita Airport Authority to fund marketing programs aimed at promoting the use of Wichita Mid-Continent Airport and the Airport System. Several years ago, the Wichita Airport Advisory Board (“Airport Board”) voted in favor of implementing an airport advertising campaign to promote Mid-Continent Airport for use by regional air travelers. The Airport Board also acknowledged the importance of increased passenger travel because it results in enhanced air service, business expansion, increased tourism, and other economic benefits to the community. It is critical to the success of the Airport System that customers in Mid-Continent Airport’s statewide catchment area be aware of these services and continue to utilize them for the betterment of the Airport. Effective marketing efforts have been contributing to the growth of airline passengers using Mid-Continent Airport. Passenger traffic in 2008 reached an all-time high, despite a difficult economic year.

Analysis: On February 12, 2008, a Supplemental Agreement No. 2 was approved which provided for a one-year option to renew the advertising contract beyond February 28, 2009, subject to negotiation of an annual budget and scope of services. The Airport Board and staff have been extremely pleased with the work performance of Armstrong|Shank, and wish to continue their services for the option period, and for one additional year. An uninterrupted period of focus by the ad agency is essential to continuing the successful programs that are currently underway. The Airport Board unanimously approved the extension of the agreement with Armstrong|Shank and the proposed budget at its meeting on February 2, 2009. The Board and staff believe that as the community faces an economic slowdown, our Airport System marketing efforts are more crucial than ever so that potential customers can be made aware of airline fare sales and other promotional events.

Financial Considerations: The contract pays the agency on a retainer basis of \$3,500 per month, plus a billing rate of \$85 per hour beyond the basic services that are covered in the retainer. Media purchases, direct expenses for printing, production, special events, etc., will be at cost. An amount of not-to-exceed \$450,000 from the approved Department of Airports budget will be allocated to this contract and for the media buys for the 12-month period ending February 28, 2010. The budget for 2010 will be presented to the WAA for approval next February. The scope of services planned for this year is outlined in Exhibit A.

Goal Impact: The Airport’s contribution to the economic vitality of Wichita is promoted through initiating agreements which assist the Wichita Airport Authority in developing marketing programs to increase passenger travel; thereby resulting in enhanced air service, business expansion, increased tourism, and other economic benefits to the community.

Legal Considerations: None.

Recommendations/Actions: It is recommended that the Wichita Airport Authority approve the expenditure of currently budgeted funds for 2009, and approve extending the contract for one year beyond February 28, 2010.

Attachments: Exhibit A – Scope of Services.

Exhibit A

Scope of Services:

This advertising campaign will continue through February 28, 2010.

1. **Strategic Planning, Design and Implementation of the Campaign.** Work together with representatives from Wichita Airport Authority (hereafter referred to as AIRPORT) to implement effective advertising and public awareness programs designed to increase passenger travel through the State of Kansas' largest airport. This will be developed from concept and implemented through execution by the agency. The ad campaign will:
 - Position Mid-Continent as the Kansas airport of choice for convenience and service.
 - Increase awareness of Mid-Continent and the air service it provides.
 - Encourage travel from business travelers to and from Wichita.
 - Encourage travel from leisure travelers to and from Wichita.
 - Help build community support of the Airport System.
 - Increase awareness of the Airport System for economic development purposes.
2. **Image campaign.** Wichita Mid-Continent – “convenient, friendly and affordable” – is the branding message developed by Armstrong/Shank. This branding process needs to continue to reach optimum effectiveness.
3. **Affinity programs.** In order to invoke loyalty to Mid-Continent Airport, marketing campaigns have been implemented with Kansas State University, Kansas University, and Wichita State University. The goal is to identify Mid-Continent Airport as your airport, just as fans identify with their favorite college teams. This program began with the football season and will continue through basketball and baseball seasons. The initial term of these campaigns is two years. It has proven to be a very successful program and should be continued. Mid-Continent Airport receives state-wide publicity through these universities' radio networks.

Development of an airport frequent flyer program is underway to build loyalty to Mid-Continent Airport among travelers who may choose to fly a different airport.

4. **Media tools.** The agency and Airport will agree upon advertising projects and use the most effective media tools available, which may include:
 - Television
 - Radio
 - Outdoor media
 - Print media
 - Internet
 - Other innovative marketing tools
5. **Proven performance-based goals.** Agency and Airport will set aggressive goals to include:
 - Promote new and existing air service to the State of Kansas and northern Oklahoma.
 - Promote the convenience and affordability of using Mid-Continent Airport.
 - Increase passenger traffic at Mid-Continent Airport.

6. **Customer Service Enhancements.** Agency and Airport will work together to continue to improve the experience of airport passengers and visitors.
7. **Consultant Services.** Under this agreement will be billed at the rate of \$85 per hour. The goals will be constantly monitored and reviewed. If it is determined that the campaign is not achieving the necessary goals, an alternative campaign must be developed or the agency must be willing to resign.
8. **Renewal Options.** By mutual agreement of both parties, this agreement will be renewed one year, through February 28, 2011.

City of Wichita
City Council Meeting
March 3, 2009

TO: Wichita Airport Authority

SUBJECT: Mid-Continent Airport
Midfield Road Duct Bank Extensions

INITIATED BY: Department of Airports

AGENDA: Wichita Airport Authority (Consent)

Recommendation: Approve the contract.

Background: On November 4, 2008 a project budget of \$2,600,000 was established for this project.

Analysis: The electrical system that feeds a portion of the airport campus has become unreliable and is in need of replacement and upgrade to support new development including the new terminal. Additionally, the communications system will be extended and expanded to support new development.

The Staff Screening and Selection Committee selected Professional Engineering Consultants to provide the professional services.

Financial Considerations: The contract for design, bid and construction related services with Professional Engineering Consultants is \$145,450. Funding for these services is within the approved budget.

Goal Impact: The Airport's contribution to the economic vitality of Wichita is promoted through infrastructure improvements to allow uninterrupted airport services to be provided.

Legal Considerations: The Law Department has approved the contract as to form.

Recommendations/Actions: It is recommended the Wichita Airport Authority approve the contract and authorize necessary signatures.

Attachments: Professional Engineering Consultants contract.

CONTRACT
for
CONSULTING SERVICES
between
WICHITA AIRPORT AUTHORITY

and

PROFESSIONAL ENGINEERING CONSULTANTS

THIS CONTRACT, made this 24th day of February, 2009 by and between the WICHITA AIRPORT AUTHORITY, Wichita, Kansas, party of the first part, hereinafter called the "OWNER" and Professional Engineering Consultants, 303 S. Topeka, Wichita, Kansas, party of the second part, hereinafter called the "CONSULTANT".

WITNESSETH: That,

WHEREAS the OWNER is engaged in the operation of Wichita Mid-Continent Airport; and whereas it is the desire of both parties that the CONSULTANT furnish consulting services in conjunction with the Electrical and Communication Duct Banks Extensions (PROJECT); and whereas all of the aforesaid being located within the corporate limits of the City of Wichita, Sedgwick County, Kansas, and

WHEREAS, the OWNER is authorized by law to employ a consultant to provide professional consulting services NOW, THEREFORE, the parties hereto do mutually agree as follows:

ARTICLE I - SCOPE OF SERVICES:

The Scope of Services to be performed by the CONSULTANT shall be as outlined in EXHIBIT A.

ARTICLE II - THE CONSULTANT AGREES:

- A. To provide the professional services, equipment, material and transportation to perform the tasks as outlined in Article I, SCOPE OF SERVICES.
- B. To designate a project manager who will coordinate all work and be the point of contact for communications and to submit qualifications of the proposed project manager to the OWNER in advance of the Notice to Proceed. The OWNER reserves the right to withhold the Notice to Proceed until a qualified project manager is designated. The OWNER shall concur with any changes to this assignment.
- C. This Agreement and all subconsultant agreements shall be governed by the laws of the State of Kansas.
- D. To submit to the OWNER in a timely manner, editable, electronic files of all surveys and drawings in AutoCAD format and specifications in Microsoft Word.

- E. To save and hold OWNER harmless against all suits, claims, damages and losses for injuries to persons or property arising from or caused by negligent acts, errors or omissions of CONSULTANT, its agents, servants, employees, or subconsultants occurring in the performance of its services under this Agreement.
- F. To maintain all books, documents, papers, accounting records, and to make such material available at the CONSULTANT'S office at reasonable times during the contract period, and for three years from the date of final payment under the Agreement, for inspection and/or duplication by the OWNER or authorized representatives.
- G. That the CONSULTANT shall not, on the grounds of race, color, sex, national origin, age or handicap, discriminate or permit discrimination in violation of any federal, state or local laws or of Part 21 of the regulations of the Office of the United States Department of Transportation (49 CFR 21). The CONSULTANT, in performing the work or services required pursuant to this Agreement, shall not participate either directly or indirectly in discriminations prohibited by the non-discrimination requirements of the City of Wichita, Kansas, as set out in EXHIBIT B. The OWNER reserves the right to take such action as the United States Government or any state or local government may direct to enforce this covenant.

The CONSULTANT assures that it will undertake an affirmative action program as required by 14 CFR Part 152, Subpart E, to insure that no person shall on the grounds of race, creed, color, national origin or sex be excluded from participating in any employment activities covered in 14 CFR Part 152, Subpart E. The CONSULTANT assures that no person shall be excluded on these grounds from participating in or receiving the services or benefits of any program or activity covered by this subpart. The CONSULTANT assures that it will require that their covered suborganizations provide assurances to the OWNER that they similarly will undertake affirmative action programs and that they will require assurances from their suborganizations, as required by 14 CFR Part 152, Subpart E, to the same effect.

- H. To accept compensation for the work herein described in such amounts and at such periods as hereinafter provided and that such compensation shall be satisfactory and sufficient payment for all work performed, equipment or materials used and services rendered in connection with such work described in EXHIBIT A.
- I. To submit billings to the OWNER for the Services performed as required by this Agreement. Billings shall not exceed progress of work as evidenced by deliverables submitted by the CONSULTANT and approved by the OWNER. During the progress of work covered by the Agreement, partial payment requests may be made at intervals of not less than four weeks. The progress billings shall be supported by documentation acceptable to the OWNER, which shall include a record of the percentage completion evidenced by approved deliverables, of the number of days allocated for completion of the work, the number of days that have elapsed, and the number of days that remain to complete the work. Progress billings shall also include copies of subconsultant invoices to the CONSULTANT for the same billing period. Payment to subconsultants, for satisfactory performance shall be made within 30 days of receipt of payment and no retainage shall be withheld. Any delay or postponement of payment from the referenced time frame may occur only for good cause and following written approval of the OWNER.

- J. To complete and deliver plans to the OWNER within the time allotted for the work as stipulated herein; except that the CONSULTANT shall not be responsible or held liable for the time required for reviews for the approving parties or other delays occasioned by the actions or inactions of the OWNER or other agencies, or for other unavoidable delays beyond the control of the CONSULTANT. The schedule is outlined in EXHIBIT C, attached hereto and incorporated herein by reference.
- K. To covenant and represent to be responsible for the professional and technical accuracy and the coordination of all drawings or other work or material furnished by the CONSULTANT under this Agreement.

CONSULTANT further agrees, covenants and represents that Services furnished by CONSULTANT, its agents, employees and subconsultants under this Agreement shall be free from negligent errors or omissions.

CONSULTANT further agrees, covenants and represents, that all specifications and bid documents prepared in accordance with the work required by this Agreement shall contain a clause that provides the following:

"Notwithstanding any thing to the contrary contained in these bid documents or the contract to be awarded herein, the OWNER shall not be subject to arbitration and any clause relating to arbitration contained in these bid documents or in the contract to be awarded herein shall be null and void."

- L. To procure and maintain such insurance as will protect the CONSULTANT from damages resulting from negligent acts of the CONSULTANT, its agents, officers, employees and subcontractors in the performance of the professional services rendered under this Agreement and for which they are legally liable. Such policy of insurance shall be in an amount not less than \$500,000.00 subject to deductible of not more than \$100,000.00. The CONSULTANT shall be responsible for payment of all deductible amounts without reimbursement by OWNER. In addition, a Worker's Compensation and Employer's Liability policy shall be procured and maintained. This policy shall include an "all state" endorsement. Said insurance policy shall also cover claims for injury, disease or death of employees arising out of and in the course of their employment, which, for any reason, may not fall within the provisions of the Worker's Compensation Law. The liability limit shall not be less than \$500,000 for each occurrence.

Further, a comprehensive general liability policy shall be procured and maintained by the CONSULTANT for the duration of the project that shall be written in a comprehensive form and shall protect CONSULTANT against all claims arising from injuries to persons (other than CONSULTANT'S employees) or damage to property of the OWNER or others arising out of any negligent act or omission of CONSULTANT, its agents, officers, employees, or subcontractors in the performance of CONSULTANT services under this Agreement. The liability limit shall not be less than \$500,000 per occurrence for bodily injury, death and property damage. The Wichita Airport Authority, Wichita, Kansas; the City of Wichita; their officers, employees and agents shall be named as additional insureds under the terms of the policy with respect to the names insurer's operations on Wichita Mid-Continent Airport or Colonel James Jabara Airport, whichever is applicable. Satisfactory Certificates of Insurance shall be filed with the OWNER prior to the time CONSULTANT starts any work under

this Agreement. The CONSULTANT shall maintain such insurance through the duration of the PROJECT. In addition, insurance policies applicable hereto shall contain a provision that provides that the OWNER shall be given thirty (30) days written notice by the insurance company before such policy is substantially changed or cancelled.

- M. Its agents, employees and subcontractors, shall be subject to any and all applicable rules, regulations, orders and restrictions which are now in effect and which apply to its activities on Airport property, including such rules, regulations, orders and/or restrictions that may be adopted, enacted or amended during the term of this Agreement.
- N. The CONSULTANT and the OWNER shall not be obligated to resolve any claim or dispute related to this Agreement by arbitration. Any reference to arbitration in any proposal or contract documents is deemed void.
- O. That all information provided by the OWNER and/or developed for the PROJECT shall be considered confidential and proprietary, and shall not be reproduced, transmitted, used or disclosed by the CONSULTANT without the written consent of OWNER, except as may be necessary for the non-disclosing party to fulfill its obligations hereunder; provided, however, that the limitation shall not apply to any information or portion thereof, which is:
 - 1. Within the public domain at the time of its disclosure.
 - 2. Required to be disclosed by a court of competent jurisdiction or Government order.
 - 3. Approved by the OWNER for publicity.
 - 4. Required to be communicated in connection with filings with governmental bodies having jurisdiction over the design or construction of the PROJECT.

ARTICLE III - THE OWNER AGREES:

- A. To furnish all available data pertaining to the PROJECT available to the OWNER. All data shall be considered confidential unless otherwise noted.
- B. To provide standards, as available, for the PROJECT.
- C. To pay the CONSULTANT for services in accordance with the requirements of this Agreement within thirty (30) working days from the date of receipt of invoice and upon satisfactory performance of service.
- D. To provide the right of entry into secured areas for CONSULTANT'S personnel, subject to all rules and regulations of the OWNER, the Transportation Security Administration and Federal Aviation Administration regarding airfield safety and security.
- E. To pay all applicable design phase fees, unless otherwise stated herein.
- F. To abate asbestos, as needed, within the work zone.

ARTICLE IV - PAYMENT PROVISIONS:

- A. Payment to the CONSULTANT for performance of the specified services shall be as described hereinafter.
 - 1. Payment to the CONSULTANT for the performance of Phase I design services shall be a lump sum fee amount of \$93,750.00. (EXHIBIT D)
 - 2. Payment to the CONSULTANT for the performance of Phase I bid phase services shall be a lump sum fee amount of \$4,000.00. (EXHIBIT D)
 - 3. Payment to the CONSULTANT for the performance of Phase I construction phase services shall be on an hourly rate plus direct expenses of a not to exceed amount of \$47,700.00. (EXHIBIT D-1)
- B. If an addition or deduction of work should be necessary, by virtue of a change in the scope of the proposed PROJECT, or by the OWNER'S request for a change in services, the CONSULTANT will be given written notice by the OWNER along with a request for a fee for the change in such services; but no additional work shall be performed, nor shall additional compensation be paid except on the basis of a Supplemental Agreement duly entered into by the parties.
- C. Final payment shall not occur until all work is complete and approved by the OWNER.

ARTICLE V - THE PARTIES HERETO MUTUALLY AGREE:

A. TERMINATION OF CONTRACT

- 1. That the right is reserved to the OWNER to terminate this Agreement or any portion of phase of this Agreement at any time, upon written notice, in the event the PROJECT is to be abandoned; PROVIDED, however, that in such case the CONSULTANT shall be paid the reasonable value of the Services rendered up to the time of termination on the basis of the provisions of this Agreement, but in no case shall payment be more than the CONSULTANT'S actual costs plus a reasonable sum for profit. Upon receipt of such notice, Services shall be immediately discontinued (unless the notice directs otherwise) and all materials as may have been accumulated in performing this Agreement, whether completed or in progress, delivered to the OWNER and become the possession of the OWNER.
- 2. Any violation or breach of the terms of this Agreement on the part of the CONSULTANT or subconsultant(s) may result in the suspension or termination of this Agreement or such other action, which may be necessary to enforce the rights of the parties of this Agreement. In such case, the OWNER may take possession of all materials as may have been accumulated in performing this Agreement, whether completed or in progress and take over the work and prosecute the same to completion, by separate agreement or otherwise, for the account and at the expense of the CONSULTANT. The CONSULTANT shall be

liable to the OWNER for those costs associated with the remedy of the breach of terms.

3. The rights and remedies of the OWNER provided in this clause are in addition to any other rights and remedies provided by law or under this Agreement.
- B. That the specifications, plans and other deliverables shall become the property of the OWNER upon delivery or termination of the Services in accordance with this Agreement. The OWNER shall not hold the CONSULTANT liable upon the OWNER'S reuse of any part of deliverables, and there shall be no restriction or limitation on their further use by the OWNER. Consultant's seal and name shall not be reproduced on such documents if reused by the OWNER.
- C. That the services to be performed by the CONSULTANT under the terms of this Agreement are personal and cannot be assigned, sublet or transferred without specific consent of the OWNER.
- D. In the event of unavoidable delays in the progress of the work, reasonable extensions in the time will be granted by the OWNER, provided, however, that the CONSULTANT shall request extensions in writing giving the reason therefore.
- E. Unless otherwise provided in this Agreement, the CONSULTANT and agents, servants, employees, or subconsultants shall have no responsibility for the discovery, presence, handling, removal or disposal of or exposure of persons to hazardous materials in any form at the project site, including but not limited to asbestos, asbestos products, polychlorinated biphenyl (PCB) or other toxic substances.
- F. It is further agreed that this Agreement and all contracts entered into under the provisions of this Agreement shall be binding upon the parties hereto and their successors and assigns.
- G. For good cause, and as consideration for executing this Agreement, the CONSULTANT, acting herein by and through its authorized agent, hereby conveys, sells, assigns, and transfers to the OWNER all right, title, and interest in and to all causes of action it may now or hereafter require under the anti-trust laws of the United States and the State of Kansas, relating to the particular product, products, or services purchased or acquired by the OWNER pursuant to this Agreement.
- H. Neither the OWNER'S review, approval or acceptance of, nor payment for, any of the work or services required to be performed by the CONSULTANT under this Agreement shall be construed to operate as a waiver of any right under this Agreement or any cause of action arising out of the performance of this Agreement.
- I. It is specifically agreed between the parties executing this Agreement, that it is not intended by any of the provisions of any part of this Agreement to create the public or any member thereof a third party beneficiary hereunder, or to authorize anyone not a party to this Agreement to maintain a suit for damage pursuant to the terms of provisions of this Agreement.
- J. The CONSULTANT hereby certifies that:

1. The CONSULTANT has not employed or retained for a commission, percentage, brokerage, contingent fee, or other consideration, any firm or person (other than a bona fide employee working solely for the above CONSULTANT) to solicit or secure this Agreement.
2. The CONSULTANT has not agreed, as an express or implied condition for obtaining this Agreement, to employ or retain the services of any firm or person in connection with carrying out the Agreement.
3. The CONSULTANT has not paid or agreed to pay to any firm, organization, or person (other than a bona fide employee working solely for the CONSULTANT) any fee, contribution, donation, or consideration of any kind for, or in connection with, procuring or carrying out the Agreement, except as here expressly stated (if any).
4. By acceptance of this Agreement that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency. It further agrees by submitting this Agreement that it will include this clause without modification in all lower tier transactions, solicitations, proposals, contracts, and subcontracts. Where the CONSULTANT or any lower tier participant is unable to certify to this statement, it shall attach an explanation to this Agreement.

IN WITNESS WHEREOF, the OWNER and the CONSULTANT have executed this Agreement as of the date first written above.

ATTEST:

WICHITA AIRPORT AUTHORITY
WICHITA, KANSAS

By: _____
Karen Sublett, City Clerk

By: _____
Carl Brewer, President
"OWNER"

By: _____
Victor D. White, Director of Airports

ATTEST:

Professional Engineering Consultants
303 S. Topeka
Wichita, Kansas 67202

By: _____
Title: ENGINEER

By: _____
Title: EXEC. VICE PRESIDENT
"CONSULTANT"

APPROVED AS TO FORM:

Director of Law Date: _____

ATTACHMENTS: EXHIBIT A – Scope of Services
EXHIBIT B – Equal Employment Opportunity
EXHIBIT C – Project Schedule
EXHIBITS D & D-1 – Fee Schedules
EXHIBIT E – Project Map

SCOPE OF SERVICES

Phase I

This letter is written to serve as an agreement between the Wichita Airport Authority (CLIENT) and Professional Engineering Consultants, P.A. (PEC) to provide professional services for design of an electrical duct bank system from Substation "A" South to the Enterprise car rental site, around the Enterprise car rental site and South to existing "SS-6" and "SS-29" location. "SS-6" and SS-19" will be replaced with a new Vista unit (SS-12) and new feeders to existing transformers "TAR" and "TBE" will be designed. Existing feeders "12-12" and "12-44" will be designed for relocation from an existing duct bank to the new duct bank system and new feeders will be designed for installation. A new Vista unit "SS-9" will be designed to serve the Enterprise site and future expansion East of Midfield Road. A separate duct bank system will be designed for future airport terminal circuits paralleling the normal circuit duct banks. The terminal circuit duct banks and normal loop duct banks will be designed with manholes, pad vaults and structures to effectively separate the circuits. A communications duct bank will be designed from West Harry Street South to Crossfield Road and West to Air Cargo Road for future communications cabling. Refer to Exhibit "E".

A. Scope of Services:

1. Electrical engineering design services required for the development of plans, technical specifications, and construction cost estimates for the project in a format and detail required by Airport Engineering.
2. The following services are included:
 - a. Phase I – Design Phase:
 - 1) Pre-design conference with Airport Staff.
 - 2) Provide existing conditions field survey information for the site. This will include contacting local utility companies and airport tenants to properly label the utilities on the site with each Owner.
 - 3) Provide (2) copies of the preliminary design for review. This preliminary design will include topography, all utility information, and layout of the pavements available, as well as a preliminary cost estimate for the work.
 - 4) Provide (2) copies of the plans and the Part III technical specifications for office check review. The plans will include:
 - a) Schematic plans.
 - b) Identification of all potential utility conflicts.

- c) Identify how each utility conflict will be resolved during construction completion with dates when each utility conflict will be resolved by each utility company.
 - d) Photo document key underground utilities.
- 5) A field check of the plans will be performed with a representative of the Owner present.
- 6) Provide (2) bid ready sets of final plans and specifications for final design review by the Owner.
- 7) Prepare and provide final contact documents including plans (signed and sealed by an engineer licensed in the State of Kansas), master specifications, construction cost estimate and e-file of plans and specifications to Owner.
- 8) Assist the Owner with presentations to Design Council, if needed.
- b. Phase I – Bidding Phase:
 - 1) PEC will conduct a pre-bid meeting that will include a site tour.
 - 2) Bidding assistance including response to Contractor's questions and preparation of items for inclusion in Addenda.
 - 3) Provide to the Owner a final construction cost estimate just prior to bid opening.
- c) Phase I – Construction Related Services Phase.
 - 1) PEC will conduct a pre-construction conference for Airport Staff to cover airport safety, security, operations and environmental.
 - 2) Review shop drawings.
 - 3) Review periodic and final pay requests.
 - 4) Answer technical questions.
 - 5) Provide meeting minutes.
 - 6) Evaluate materials testing for acceptance.
 - 7) Evaluate possible change order issues and prepare change orders.
 - 8) Construction Observation including:
 - a) Provide near full-time onsite construction observation.
 - b) On-site weekly project meetings.
 - c) Record work activity for all days of the construction contract.
 - d) Photo document key underground utilities.
 - 9) Provide a Certificate of Acceptance for the work.
 - 10) Final inspection.
 - 11) Record drawings shall be prepared and one set will be provided in reproducible format, complete with electronic files of the plans and specifications within 45 days of substantial completion.

B. Responsibilities of CLIENT:

The CLIENT agrees to provide the following pursuant to PEC accomplishing the Scope of Services outlined herein.

1. Utility requirements for all equipment specified and/or provided by the Owner or other Contractors.
2. Existing drawings for site and future projects.

**REVISED NON-DISCRIMINATION AND
EQUAL EMPLOYMENT OPPORTUNITY/AFFIRMATIVE ACTION PROGRAM
REQUIREMENTS STATEMENT FOR CONTRACTS OR AGREEMENTS**

(March 27, 2008)

During the term of this contract, the contractor or subcontractor, vendor or supplier of the City, by whatever term identified herein, shall comply with the following Non-Discrimination--Equal Employment Opportunity/Affirmative Action Program Requirements:

- A. During the performance of this contract, the contractor, subcontractor, vendor or supplier of the City, or any of its agencies, shall comply with all the provisions of the Civil Rights Act of 1964, as amended: The Equal Employment Opportunity Act of 1972; Presidential Executive Orders 11246, 11375, 11141; Part 60 of Title 41 of the Code of Federal Regulations; the Age Discrimination in Employment Act of 1967; the Americans with Disabilities Act of 1990 and laws, regulations or amendments as may be promulgated thereunder.

- B. Requirements of the State of Kansas:
 - 1. The contractor shall observe the provisions of the Kansas Act against Discrimination (Kansas Statutes Annotated 44-1001, et seq.) and shall not discriminate against any person in the performance of work under the present contract because of race, religion, color, sex, disability, and age except where age is a bona fide occupational qualification, national origin or ancestry;
 - 2. In all solicitations or advertisements for employees, the contractor shall include the phrase, "Equal Opportunity Employer", or a similar phrase to be approved by the "Kansas Human Rights Commission";
 - 3. If the contractor fails to comply with the manner in which the contractor reports to the "Kansas Human Rights Commission" in accordance with the provisions of K.S.A. 1976 Supp. 44-1031, as amended, the contractor shall be deemed to have breached this contract and it may be canceled, terminated or suspended in whole or in part by the contracting agency;
 - 4. If the contractor is found guilty of a violation of the Kansas Act against Discrimination under a decision or order of the "Kansas Human Rights Commission" which has become final, the contractor shall be deemed to have breached the present contract, and it may be canceled, terminated or suspended in whole or in part by the contracting agency;

5. The contractor shall include the provisions of Paragraphs 1 through 4 inclusive, of this Subsection B, in every subcontract or purchase so that such provisions will be binding upon such subcontractor or vendor.

C. Requirements of the City of Wichita, Kansas, relating to Non-Discrimination -- Equal Employment Opportunity/Affirmative Action Program Requirements:

1. The vendor, supplier, contractor or subcontractor shall practice Non-Discrimination -- Equal Employment Opportunity in all employment relations, including but not limited to employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The vendor, supplier, contractor or subcontractor shall submit an Equal Employment Opportunity or Affirmative Action Program, when required, to the Department of Finance of the City of Wichita, Kansas, in accordance with the guidelines established for review and evaluation;
2. The vendor, supplier, contractor or subcontractor will, in all solicitations or advertisements for employees placed by or on behalf of the vendor, supplier, contractor or subcontractor, state that all qualified applicants will receive consideration for employment without regard to race, religion, color, sex, "disability, and age except where age is a bona fide occupational qualification", national origin or ancestry. In all solicitations or advertisements for employees the vendor, supplier, contractor or subcontractor shall include the phrase, "Equal Opportunity Employer", or a similar phrase;
3. The vendor, supplier, contractor or subcontractor will furnish all information and reports required by the Department of Finance of said City for the purpose of investigation to ascertain compliance with Non-Discrimination -- Equal Employment Opportunity Requirements. If the vendor, supplier, contractor, or subcontractor fails to comply with the manner in which he/she or it reports to the City in accordance with the provisions hereof, the vendor, supplier, contractor or subcontractor shall be deemed to have breached the present contract, purchase order or agreement and it may be canceled, terminated or suspended in whole or in part by the City or its agency; and further Civil Rights complaints, or investigations may be referred to the State;
4. The vendor, supplier, contractor or subcontractor shall include the provisions of Subsections 1 through 3 inclusive, of this present section in every subcontract, subpurchase order or subagreement so that such provisions will be binding upon each subcontractor, subvendor or subsupplier.

5. If the contractor fails to comply with the manner in which the contractor reports to the Department of Finance as stated above, the contractor shall be deemed to have breached this contract and it may be canceled, terminated or suspended in whole or in part by the contracting agency;

D. Exempted from these requirements are:

1. Those contractors, subcontractors, vendors or suppliers who have less than four (4) employees, whose contracts, purchase orders or agreements cumulatively total less than five thousand dollars (\$5,000) during the fiscal year of said City are exempt from any further Equal Employment Opportunity or Affirmative Action Program submittal.
2. Those vendors, suppliers, contractors or subcontractors who have already complied with the provisions set forth in this section by reason of holding a contract with the Federal government or contract involving Federal funds; provided that such contractor, subcontractor, vendor or supplier provides written notification of a compliance review and determination of an acceptable compliance posture within a preceding forty-five (45) day period from the Federal agency involved.

EXHIBIT C

PROJECT SCHEDULES
Phase I

Preliminary Plans	6 Weeks
Final Plans	4 Weeks

EXHIBIT D

PAYMENT PROVISIONS
Phase I

Staff Hours, Fees and Expenses

Design Phase		Hours	Fees
Engineer (Electrical/Civil)		500 hrs	\$50,000
Survey		162 hrs	\$12,500
Pot Holing Utility Conflicts			\$13,000
Landscape Architect		20 hrs	\$2,000
CADD Technicians		250 hrs	\$16,250
Bid Phase			
Engineer		40 hrs	<u>\$4,000</u>
	Lump Sum Total		\$97,750
Construction Phase			
Engineer		80 hrs	\$7,200
On-Site Observation		700 hrs	<u>\$40,500</u>
	Not to Exceed Total		\$47,700
<hr/>			
Total			\$145,450

Exclusions: Additional printing costs shall be specifically excluded from the Scope of Services to be provided by PEC.

HOURLY RATE SCHEDULE

<u>Title</u>	<u>Hourly Rate</u>
Principal Engineer 3	\$125.00
Principal Engineer 2	\$120.00
Principal Engineer 1	\$115.00
Project Manager 5	\$110.00
Project Manager 4	\$105.00
Project Engineer 5	\$102.00
Project Engineer 4	\$92.00
Project Engineer 3	\$82.00
Project Engineer 2	\$75.00
Design Engineer 3	\$70.00
Design Engineer 2	\$65.00
Design Engineer 1	\$55.00
Landscape Arch. 3	\$75.00
Land Use Planner 3	\$92.00
Land Use Planner 1	\$65.00
Design Technician Supervisor 3	\$80.00
Design Technician Supervisor 2	\$60.00
Design Technician 5	\$78.00
Design Technician 4	\$68.00
Design Technician 3	\$58.00
Drafter/CAD Operator 4	\$58.00
Drafter/CAD Operator 3	\$50.00
Drafter/CAD Operator 2	\$44.00
Drafter/CAD Operator 1	\$38.00
Balance Technician Supervisor 3	\$68.00
Balance Technician 5	\$68.00
Balance Technician 4	\$64.00
Balance Technician 3	\$58.00
Land Surveyor 4	\$88.00
Land Surveyor 3	\$70.00
Land Surveyor 2	\$60.00
Party Chief 4	\$55.00
Instrument Man 3	\$50.00
Instrument Man 2	\$48.00
Survey Assistant 2	\$44.00
Survey Assistant 1	\$32.00

6/3/08

HOURLY RATE SCHEDULE

Page 2

<u>Title</u>	<u>Hourly Rate</u>
3 Man Survey Crew	\$175.00
2 Man Survey Crew	\$140.00
2 Man Survey Crew w/Robot.....	\$150.00
1 Man Survey Crew w/Robot.....	\$110.00
Field Engineer 3	\$75.00
Inspector Supervisor 3	\$70.00
Inspector 5.....	\$68.00
Inspector 4.....	\$62.00
Inspector 3.....	\$54.00
Lab Technician Supervisor 3	\$66.00
Lab Technician 4.....	\$58.00
Lab Technician 3.....	\$50.00
Lab Technician 2.....	\$46.00
Lab Technician 1.....	\$34.00
Administrative Assistant Supervisor 4.....	\$52.00
Administrative Assistant 3	\$48.00
Clerk Typist 2	\$40.00
Clerk Typist 1	\$32.00
Computer Programmer.....	\$68.00
Technical Writer 3	\$52.00
Word Processing Technician 4	\$50.00
Computer CADD	\$16.00
GPS	\$50.00

REIMBURSABLES:

Outside Consultants	Cost plus 10%
In-House Consultant	Labor Cost Times 2.0
Reproduction & Photography	Cost plus 10%
Equipment Rental.....	Cost plus 10%
Material	Cost plus 10%
Truck Mileage.....	\$0.60/Mile
Auto Mileage	\$0.55/Mile
Car Rental and Fuel	Cost
Per Diem	Cost
Telephone (Long Distance).....	No Charge
Fax.....	No Charge
Postage (Regular Mail)	No Charge
Deliveries and Overnight Mail.....	Cost plus 10%

6/3/08

HARRY STREET

W
A
A

MIDFIELD ROAD

MID-CONTINENT DRIVE

CROSSFIELD ROAD

AIR CARGO ROAD

D ROAD

PHASE I LEGEND

- c — COMM. DUCT
— p — ELECT. DUCT

DUCT BANKS

WICHITA MID-CONTINENT AIRPORT

THE WICHITA AIRPORT AUTHORITY
WICHITA, KANSAS

DATE	DR. BY	SCALE	SHEET
12/24/08	H.G.O.	1" = 500'	1 of 1

CITY OF WICHITA
City Council Meeting
March 3, 2009

TO: Wichita Airport Authority

SUBJECT: Wichita Mid-Continent Airport
Acquisition of 1535 South Yucca Road

INITIATED BY: Property Management

AGENDA: Wichita Airport Authority (Consent)

Recommendation: Approve the acquisition.

Background: The Wichita Airport Authority Capital Improvement Program (CIP) includes the purchase of land for aviation related development. The CIP is designed to implement the appropriate parts of the Airport Master Plan while addressing the financial capabilities of the Department of Airports. Land located within the boundaries of Harry Street, Pueblo Street, Ridge Road and Airport Road have been identified as parcels appropriate to acquire to accommodate the long range need for airport property not requiring airfield access. Within the past three years, four parcels in this area were acquired under a willing buyer/seller arrangement.

Analysis: The property located at 1535 South Yucca Road is available for sale. The site consists of 20,090 square feet and is zoned single family. Improvements consist of a 1,252 square foot ranch house built in 1954. In January 2009, the property appraised for \$102,000 and the owner agreed to sell the property for the appraised offer. The improvements will be auctioned for relocation and the site will be maintained as open space until the time for aviation development.

Financial Considerations: A budget of \$142,000 is requested. This amount includes the purchase price, other costs required for title, closing, site cleanup and upcoming road improvement special assessment. The cost of this acquisition will be funded with General Obligation Bonds paid for with airport revenue.

Goal Impact: The Airport's contribution to the economic vitality of Wichita is promoted through maintaining sufficient developable land to accommodate the long-range demand.

Legal Considerations: The Law Department approved the agreement as to form.

Recommendation/Action: It is recommended that the Wichita Airport Authority approve the purchase agreement and authorize the necessary signatures.

Attachments: Real estate purchase agreement and aerial map.

Printed: 2/13/2009 10:52:55 A
 Powered By GeoSmart.net

Powered By GeoSmart.net

164

REAL ESTATE PURCHASE AGREEMENT

THIS AGREEMENT, Made and entered into this 11 day of February, 2009 by and between Robert K. Ratzlaff, a single person, hereinafter referred to as "Seller," whether one or more, and the Wichita Airport Authority, hereinafter referred to as "Buyer," whether one or more.

WITNESSETH: That for and in consideration of the mutual promises, covenants and payments hereinafter set out, the parties hereto do hereby contract to and with each other, as follows:

1. The Seller does hereby agree to sell and convey to the Buyer by a warranty deed for the following described tract, to wit:

Lot 11, Block A, Rolling Hills Mesa Addition to Wichita, Sedgwick County, KS

2. The Buyer hereby agrees to purchase and pay to the Seller as consideration for the conveyance to Buyer, the above described tract the sum of One Hundred Two Thousand Dollars and no/100 (\$102,000.00) in the manner following, to-wit: cash at closing.

3. A complete abstract of title certified to date, or a title insurance company's commitment to insure, to the above described real property, showing a merchantable title vested in the seller, subject to easements and restrictions of record is required. The Title Evidence shall be sent to Property Management Division- for examination by the Buyer as promptly and expeditiously as possible, and it is understood and agreed that the Seller shall have a reasonable time after said Title Evidence has been examined in which to correct any defects in title.

4. A duly executed copy of this Purchase Agreement shall be delivered to the parties hereto.

5. It is understood and agreed between the parties hereto that time is of the essence of this contract, and that this transaction shall be consummated on or before March 13, 2009.

6. Seller further agrees to convey the above described easement with all the improvements located thereon and deliver possession of the same in the same condition as they now are, reasonable wear and tear excepted.

7. Possession to be given to Buyer not later than the March 20, 2009.

8. In the event an Owners title insurance policy is furnished, the total cost of the commitment to insure and the title insurance policy will be paid 0% by Seller and 100% by Buyer. Buyer and Seller will share closing costs 50/50.

9. Site Assessment

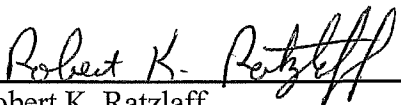
A. At any time prior to the closing of this agreement, the buyer shall have the right to conduct or cause to be conducted an environmental site assessment and/or testing on the Property. If an environmental audit or test reveals the presence of a hazardous substance or waste, as defined by federal or state law, or that there has been a spill or discharge of a hazardous substance or waste on the Property, the buyer shall have the right to void this agreement upon

notice to the seller, in which event neither party shall be under any further obligation to the other, with the exception that seller shall return to buyer any deposit made hereunder. The buyer or its agents shall have the right, without the obligation, to enter upon the Property prior to closing to undertake an environmental site assessment or testing of the Property, at the buyer's sole expense.

B. Provided, however, buyer shall in no event be obligated to close before the completion of a site assessment made pursuant to Paragraph A above. The buyer shall, if buyer determines a site assessment is necessary, exercise good faith in commencing and diligently completing such site assessment after this agreement is executed by all parties.

WITNESS OUR HANDS AND SEALS the day and year first above written.

SELLER:


Robert K. Ratzlaff

BUYER:

By Direction of the City Council

ATTEST:

Carl Brewer, Mayor

Karen Sublett, City Clerk

Approved as to Form:

Gary E. Rebenstorf, Director of Law

**PRELIMINARY ESTIMATES
FOR CITY COUNCIL MARCH 3, 2009**

- a. 2009 Contract Maintenance Mill & Overlay Phase 1 (north of 63rd Street South, east of 135th Street West) (472-84789/131532/132722/620535/133116/N/A) Traffic shall be maintained using flagpersons and barricades. (District I,II,III) - \$996,379.00

City of Wichita
City Council Meeting
March 3, 2009

TO: Mayor and City Council Members

SUBJECT: Petition for Street Paving in Smithmoor Addition (west of Greenwich, south of Harry) (District II)

INITIATED BY: Department of Public Works

AGENDA: Consent

Recommendation: Approve the new Petition.

Background: On September 16, 2008, the City Council approved a petition to pave streets in Smithmoor Addition. An attempt to award a construction contract within the budget set by the Petition was not successful. The developer has submitted a new Petition with an increased budget. The signature on the Petition represents 100% of the improvement district.

Analysis: The project will provide street paving for a new residential development located west of Greenwich, south of Harry.

Financial Considerations: The existing Petition totals \$63,000. The new Petition totals \$76,750. The funding source is special assessments.

Goal Impact: This project addresses the Efficient Infrastructure goal by providing street paving required for a new residential development.

Legal Considerations: State Statutes provide that a Petition is valid if signed by a majority of resident property owners or owners of a majority of property in the improvement district.

Recommendations/Actions: It is recommended that the City Council approve the new Petition, adopt the Resolution and authorize the necessary signatures.

Attachments: Map, CIP Sheet, Petition and Resolution.

First Published in the Wichita Eagle on March 6, 2009

RESOLUTION NO. 09-060

RESOLUTION OF FINDINGS OF ADVISABILITY AND RESOLUTION AUTHORIZING CONSTRUCTING PAVEMENT ON SMITHMOOR COURT (WEST OF GREENWICH, SOUTH OF HARRY) 472-84756 IN THE CITY OF WICHITA, KANSAS, PURSUANT TO FINDINGS OF ADVISABILITY MADE BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS.

BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS THAT THE FOLLOWING FINDINGS AS TO THE ADVISABILITY OF AUTHORIZING CONSTRUCTING PAVEMENT ON SMITHMOOR COURT (WEST OF GREENWICH, SOUTH OF HARRY) 472-84756 IN THE CITY OF WICHITA, KANSAS, ARE HEREBY MADE TO-WIT:

SECTION 1. That Resolution No. 08-452 adopted on September 16, 2008 is hereby rescinded

SECTION 2. That it is necessary and in the public interest to authorize constructing pavement on Smithmoor Court (west of Greenwich, south of Harry) 472-84756.

Said pavement shall be constructed of the material in accordance with plans and specifications provided by the City Engineer.

SECTION 3. That the cost of said improvements provided for in Section 2 hereof is estimated to Seventy-Six Thousand Seven Hundred Fifty Dollars (\$76,750) exclusive of the cost of interest on borrowed money, with 100 percent payable by the improvement district. Said estimated cost as above set forth is hereby increased at the pro-rata rate of 1 percent per month from and after February 1, 2009 exclusive of the costs of temporary financing.

SECTION 4. That all costs of said improvements attributable to the improvement district, when ascertained, shall be assessed against the land lying within the improvement district described as follows:

SMITHMOOR 11TH ADDITION

Lots 1 through 9, Bock A

SECTION 5. That the method of apportioning all costs of said improvements attributable to the improvement district to the owners of land liable for assessment therefore shall be on a fractional basis.

That the method of assessment of all costs of the improvement for which the improvement district shall be liable shall be on a fractional basis: Lots 1 through

9, Block A SMITHMOOR 11TH ADDITION shall each pay 1/9 of the total project cost.

Where the ownership of a single lot or tract is or may be divided into two or more parcels, the assessment to the lot or tract so divided shall be assessed to each ownership or parcel on a square foot basis. Except when driveways are requested to serve a particular tract, lot or parcel, the cost of said driveway shall be in addition to the assessment to said tract, lot, or parcel and shall be in addition to the assessment for other improvements.

SECTION 6. That payment of said assessments may indefinitely be deferred as against those property owners eligible for such deferral available through the Special Assessment Deferral Program.

SECTION 7. That the City Engineer shall prepare plans and specifications for said improvement and a preliminary estimate of cost therefore, which plans, specifications, and a preliminary estimate of cost shall be presented to this Body for its approval.

SECTION 8. Whereas, the Governing Body of the City, upon examination thereof, considered, found and determined the Petition to be sufficient, having been signed by the owners of record, whether resident or not, of more than Fifty Percent (50%) of the property liable for assessment for the costs of the improvement requested thereby; the advisability of the improvements set forth above is hereby established as authorized by K.S.A. 12-6a01 et seq., as amended.

SECTION 9. Be it further resolved that the above-described improvement is hereby authorized and declared to be necessary in accordance with the findings of the Governing Body as set out in this resolution.

SECTION 10. That the City Clerk shall make proper publication of this resolution, which shall be published once in the official City paper and which shall be effective from and after said publication.

PASSED by the governing body of the City of Wichita, Kansas, this 3rd day of March, 2009.

CARL BREWER, MAYOR

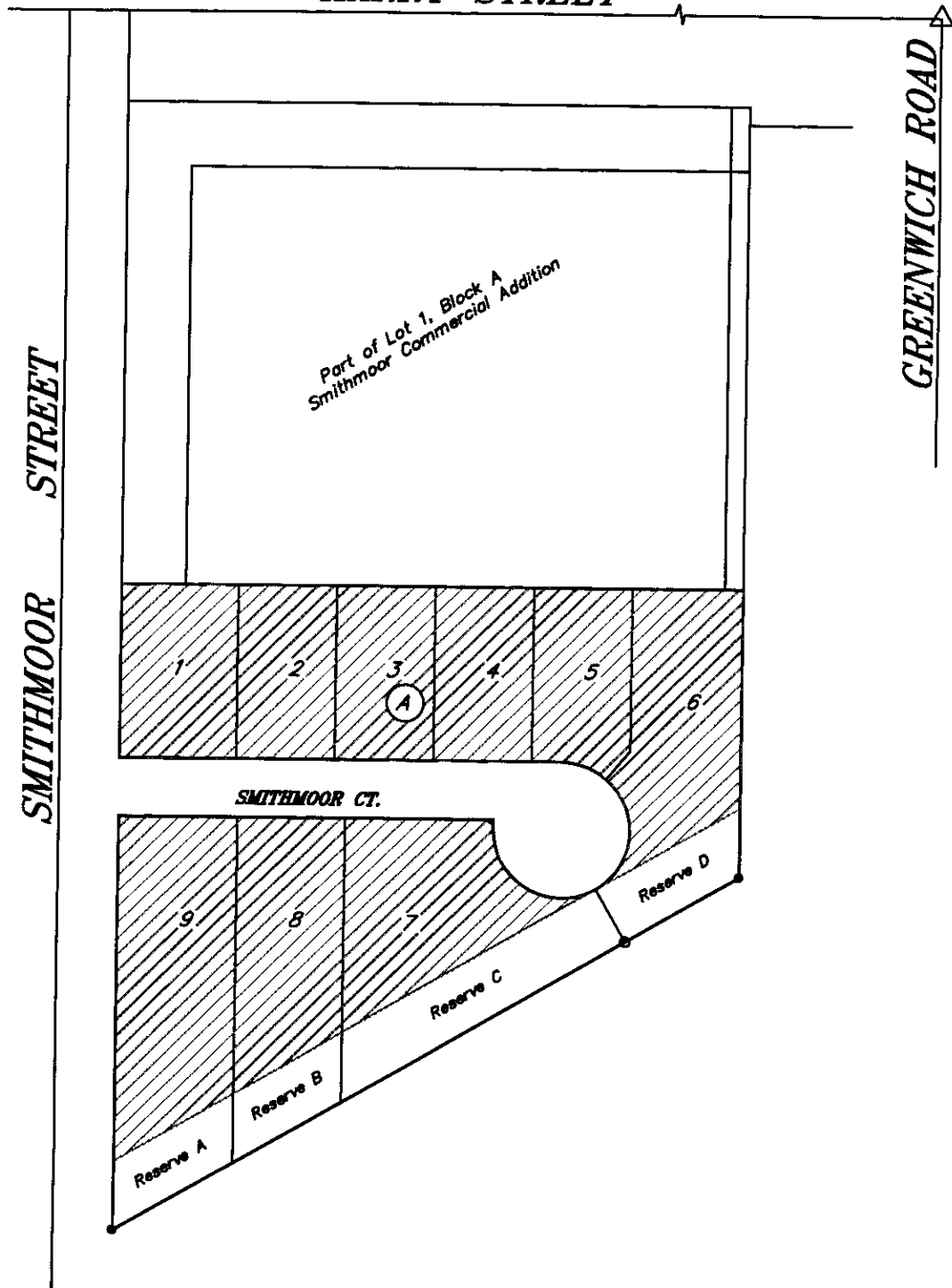
ATTEST:

KAREN SUBLETT, CITY CLERK

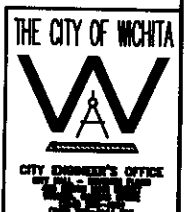
(SEAL)

SMITHMOOR 11TH ADDITION

HARRY STREET



BENEFIT DISTRICT 
 (ACTUAL ALIGNMENT TO BE
 DETERMINED BY DESIGN ENGINEER)



CAPITAL IMPROVEMENT

PROJECT AUTHORIZATION

CITY OF WICHITA

USE:
To Initiate Project ☐
To Revise Project ☒

1. Prepare in triplicate
2. Send original & 2 copies to budget.
3. City Manager to sign all copies.
4. File original w/ initiating resolution in City Clerk.
5. Return 2nd copy to initiating department.
6. Send 3rd copy to Controller.

1. Initiating Department Public Works	2. Initiating Division Eng	3. Date 2/11/2009	4. Project Description & Location Paving in Smithmoor Addition
5. CIP Project Number NI-200924	6. Accounting Number	7. CIP Project Date (Year) 2009	8. Approved by WCC Date
9. Estimated Start Date As Required	10. Estimated Completion Date As Required	11. Project Revised	
12. Project Cost Estimate			
ITEM	GO	SA	OTHER
Right of Way			
Paving, grading & const.		\$196,750	\$196,750
Bridge & Culverts			
Drainage			
Sanitary Sewer			
Sidewalk			
Water			
Streetscape			
Totals		\$76,750	\$76,750
Total CIP Amount Budgeted			
Total Prelim. Estimate			

13. Recommendation:

Approve the petition and adopt the resolution

Division Head <i>John Denver</i>	Department Head <i>Ed M. C.</i>	Budget Officer <i>Arthur D. Hall</i>	City Manager
Date	Date	Date	Date

PAVING PETITION

RECEIVED

FEB 18 '09

CITY CLERK OFFICE

To the Mayor and City Council
Wichita, Kansas

Dear Council Members:

1. We, the undersigned owners of record as below designated, of Lots, Parcels, and Tracts of real property described as follows:

422-84756

IMPROVEMENT DISTRICT

Lots 1 - 9, Block A, Smithmoor 11th Addition, Wichita, Sedgwick County, Kansas.

do hereby petition, pursuant to the provisions of K.S.A. 12-6a01 et seq., as amended, as follows:

- (a) That there will be constructed pavement on Smithmoor Court. That said pavement between aforesaid limits is constructed with plans and specifications to be furnished by the City Engineer of the City of Wichita, Kansas.
- (b) That the estimated and probable cost of the foregoing improvement being **\$ 76,750.00**, exclusive of the cost of interest on borrowed money, with 100% percent payable by the improvement district. Said estimated cost as above set forth is hereby increased at the pro rata of 1 percent per month from and after February 1, 2009.
- (c) That the land or area above described be constituted as an improvement district against which shall be assessed 100 percent of the total actual cost of the improvement for which the improvement district is liable.

If this improvement is abandoned, altered and/or constructed privately in part or whole that precludes building this improvement under the authority of this petition, any costs that the City of Wichita incurs shall be assessed to the property described above in accordance with the terms of the petition. In addition, if the improvement is abandoned at any state during the design and/or construction of the improvement or if it is necessary for the City of Wichita to redesign, repair or reconstruct the improvement after its initial design and/or construction because the design or construction does not meet the requirements of the City, then such costs associated with the redesign, repair or reconstruction of said improvement shall be assessed to the property described above in accordance with the terms of this petition.


- (d) That the method of assessment of all costs of the improvement for which the improvement district shall be liable shall be on a fractional basis, with each of the above described lots paying 1/9 of the total project cost.

Where the ownership of a single lot or tract is or may be divided into two or more parcels, the assessment to the lot or tract so divided shall be assessed to each ownership or parcel on a square foot basis.

Except when driveways are requested to serve a particular tract, lot, or parcel, the cost of said driveway shall be in addition to the assessment to said tract, lot, or parcel and shall be in addition to the assessment for other improvements. Where the ownership of a single lot is or may be divided into two or more parcels, the assessment to the lot so divided shall be assessed to each ownership or parcel on a square foot basis.

2. It is requested that the improvements hereby petitioned be made without notice and hearing, which but for this request, would be required by K.S.A. 12-6a04.
3. That names may not be withdrawn from this petition by the signers thereof after the Governing body commences consideration of the petition or later than seven (7) days after filing, whichever comes first.
4. That when this petition has been filed with the City Clerk and it has been certified that the signatures thereon are according to the records of the Register of Deeds of Sedgwick County, Kansas, the petition may be found sufficient if signed by either (1) a majority of the resident owners of record of property liable for assessment under the proposal, or (2) the resident owners of record of more than one-half of the area liable for assessment under the proposal, or (3) the owners of record (whether resident or not) of more than one-half of the area liable for assessment under the proposal. The Governing Body is requested to proceed in the manner provided by statute to the end that the petitioned improvements may be expeditiously completed and placed in use.

WITNESS our signatures attached with respect to each of which is indicated the property owned and the date of signing.

LEGAL DESCRIPTION	SIGNATURE	DATE
<u>IMPROVEMENT DISTRICT</u> Lots 1 - 9, Block A, Smithmoor 11 th Addition		2-3-09

AFFIDAVIT

The undersigned, being first duly sworn on his oath, states: That he circulated the attached petition and that the signatures thereon are the genuine signatures of the persons they purport to be to the best of his knowledge and belief.

Kim Felton
Name

455 N. Main
Address

268-4499
Telephone Number

Sworn to and subscribed before me this 18th day of February, 2009.



Deborah Wadlock
Deputy City Clerk

**City of Wichita
City Council Meeting
March 3, 2009**

TO: Mayor and City Council Members

SUBJECT: Supplemental Agreement No. 2 for Landfill Gas Collection System Modifications and Supplemental Storm Water Management System Improvements (\$17,590.00) - SCS Engineers (District VI)

INITIATED BY: Department of Public Works

AGENDA: Consent

Recommendation: Approve the supplemental agreement with SCS Engineers and authorize the necessary signatures.

Background: To satisfy the requirements of its solid waste disposal permit, the City must close Phase I of the Brooks construction and demolition (C&D) landfill and restore proper drainage to the tops of closed municipal solid waste (MSW) cells C and D. On September 11, 2007, an agreement with SCS Engineers was approved in effort to accomplish design of the required improvements. During the design and investigation process, it became evident that additional design services were required, above and beyond the scope of the original agreement.

Analysis: The services rendered pursuant to this supplemental agreement will ensure that the storm water management and landfill gas collection systems at Brooks Landfill function as intended, and in a way that minimizes future maintenance costs. Errors discovered in the original C&D permit documents will be corrected and appurtenances redesigned, to ensure the storm water management system is adequately sized. The exposed headers and lateral piping of the landfill gas collection system will be reconfigured and redesigned as a buried system, to facilitate the future maintenance of Cell C.

Financial Considerations: Payment to SCS Engineers will be on the basis of actual accrued costs and fees, not to exceed \$17,590. Sufficient funding is available in the 2009 Brooks Landfill Post-Closure Budget.

Goal Impact: By ensuring compliance with the requirements of the general operating permit, this work will support the Core Area and Neighborhood Goal through continued provision of affordable C&D waste disposal for the public and City of Wichita cleanup crews. The continued operation of the C&D Landfill is vital to maintain the cleanliness and vitality of the city.

Legal Considerations: The supplemental agreement has been approved as to form by the Law Department.

Recommendations/Actions: It is recommended that the City Council approve the agreement and authorize the necessary signatures.

Attachments: Supplemental agreement.

SUPPLEMENTAL AGREEMENT NO. 2
to the
AGREEMENT FOR PROFESSIONAL SERVICES DATED SEPTEMBER 11, 2007
between
THE CITY OF WICHITA, KANSAS
Party of the First Part, hereinafter called the
“CITY”
and
SCS ENGINEERS
Party of the Second Part, hereinafter called the
“ENGINEER”

WITNESSETH:

WHEREAS, there now exists a contract between the two parties covering Professional Services to be provided by the ENGINEER to restore proper drainage on closed MSW cells C and D, close the Phase I C&D cell area, and modify the storm water letdowns at the northeast corner of Cell D, and the north side of Cell C, respectively; and

WHEREAS, the CITY desires to proceed with modifications to the existing landfill gas (LFG) collection system and improvements to the storm water management system, hereinafter called LFG Collection System Modifications and Supplemental Storm Water Management System Improvements, and

WHEREAS, paragraph I.C of the AGREEMENT provides that the CITY may contract for additional work on the basis of a duly entered into Supplemental Agreement,

NOW THEREFORE, the parties hereto mutually agree as follows:

1. ARTICLE I of AGREEMENT, SCOPE OF SERVICES – revise to read:
“....., and to develop LFG Collection System Modifications and Storm Water Management System Improvements for inclusion into the final bid documents as outlined in Exhibit A2, Scope of Services Statement.”

2. ARTICLE IV OF AGREEMENT, Payment Provisions – add to paragraph A:
Payment to the ENGINEER for the performance of the professional services required by this Supplemental Agreement No. 2 shall be on the basis of separate, not-to-exceed fees, based on the ENGINEER’S actual costs and shall be equal to or less than the estimated amount.

Total payments to the ENGINEER for the preparation of the work associated with Supplemental Agreement No. 2 shall include the actual costs accruing in the performance of the professional services, as outlined in this Supplemental Agreement, which are estimated in the amount of \$17,590, in accordance with Section IV.A. of the AGREEMENT.

3. Except as otherwise noted herein all terms and conditions set forth in the original AGREEMENT shall remain in force and effect.

IN WITNESS WHEREOF, the CITY and the ENGINEER have executed this Supplemental Agreement as of this _____ day of _____, 2009.

By Action of the City Council

Carl Brewer, Mayor

SEAL:

ATTEST:

Karen Sublett, City Clerk

Approved as to From:

Gary Rebenstorf, Director of Law

SCS Engineers

(Name and Title)
Vice President

ATTEST:

SCOPE OF SERVICES STATEMENT

SUPPLEMENTAL AGREEMENT NO. 2

1. GENERAL. The objective of this Supplemental Agreement shall be to design and develop LFG Collection system modifications and supplemental storm water management system improvements required to restore proper drainage on closed MSW cells C and D and efficiently close Phase I of the C&D landfill. The information requirements include:

- Work related to develop construction documents for the LFG System components related to the PROJECT.
- Work related to complete insufficient storm water drainage calculations related to the PROJECT.

SCS Engineers (ENGINEER) will function as the prime consultant for the development of the LFG Collection System Modifications and Supplemental Storm water Management System Improvements.

The work outlined herein shall hereinafter be referred to as the “LFG Collection System Modifications and Supplemental Storm Water Management System Improvements”, to differentiate it from the PROJECT as defined in the original AGREEMENT. All of the work set forth under the following paragraph II shall be understood to be a part of the LFG Collection System Modifications and Supplemental Storm Water Management System Improvements.

II. SCOPE OF SERVICES. The scope of services included in this Supplemental Agreement are as follows:

A Develop Construction Documents for LFG Collection System Modifications.

ENGINEER will perform the following to develop construction documents required for LFG collection system modifications related to the PROJECT.

- Incorporate the 2007 as-built gas system improvements along the north side of Cell D into the existing gas collection system drawing to provide an accurate base map and accommodate the design for the Cell D cap repair, so as not to impact the existing gas system, as required by the PROJECT.
- Develop a new buried header and lateral piping layout across the top of Cell C and recalculate drainage areas and flows to accommodate the new piping locations.
- Develop well modification schedules for Cell C and Cell D improvements.
- Develop LFG system construction details.
- Develop LFG System construction specifications.

B. Supplemental Storm Water Management System Design

The PROJECT required the review of storm water calculations presented in the C&D Phase 2 Permit Application to verify the sizing and design concepts of the new letdown structure to be located at the northeast corner of Cell D. Stormwater calculations for the new letdown structure were found to be undersized for total drainage area (22.3 acres instead of 51.5 acres).

The original Permit Application references requirements to install temporary terraces along the north sideslope and abandon of the existing north letdown structure (of Cell D) were required. However, no supporting storm water calculations were prepared as part of the original Permit Application for the management of stormwater fun-off from the north side of Cell D.

ENGINEER will perform the following:

- Design a new northeast pipe downchute structure and energy dissipater capable of handling the additional storm water flows omitted from the original calculations:
- Design the required temporary terraces to accommodate the control of stormwater run-off from the north side slope of Cell D;
- Prepare and submit storm water design calculations for KDHE for review and approval.

Schedule:

ENGINEER will develop the LFG Collection System Modifications and Supplemental Storm Water Management System Improvements, as defined in paragraph II, for the CITY as part of the final construction bid document.

ENGINEER will submit the stormwater design calculations to the KDHE upon receipt of comments for the City, except that the ENGINEER shall not be responsible for delays beyond the control of the ENGINEER.

END OF EXHIBIT A2

Agenda Item No. XII-7.

**City of Wichita
City Council Meeting
March 3, 2009**

TO: Mayor and City Council Members

SUBJECT: 2008 & 2009 Park Facilities Renovation (All Districts)

INITIATED BY: Department of Park and Recreation

AGENDA: Consent

Recommendation: Approve and amend the bonding resolution.

Background: The 2008 & 2009 Park Facilities Renovation (PFR) was originally approved by the City Council on November 4, 2008, funding the renovation or updates of several parks in addition to recreational and administration facilities. The original planned improvement or renovations included replacement of old park equipment and amenities with new equipment such as picnic tables, park benches, drinking fountains, athletic field bleachers, scoreboards and a portable sound system used for special events. Updates and minor renovations for recreation centers includes gym dividers, ice machines, volleyball standards, kitchen remodel, tables & chairs, and projector and electronics for the department's conference meeting room. Watson Park's planned improvements were the removal and replacements of the train depot, pony shelter and pedal boats. Additionally, matching funds from PFR in the amount of \$15,000 was used in conjunction with Habitat for Humanity, Inc., for the construction of a new playground system at 33rd St. and Jackson (Edgebrook Park).

Analysis: During the annual scheduled train maintenance review, the mechanics found significant problems and it was determined that a complete engine overhaul and other repairs were needed. Watson Park is scheduled to open on March 14th and the train is a major revenue stream for the park. Staff recommends utilizing the savings from other PFR projects that were included in the original 2008 & 2009 PRF to be used for these repairs. The PFR fund covered several other projects that have been completed and came in under budget, they are the Train Depot replacement; volleyball standards; and ice machines.

Financial Considerations: The 2008 & 2009 Park Capital Improvement Program (CIP) includes \$200,000 for each year for a total of \$400,000 for the renovation of park and recreation facilities. The funding source is general obligation bonds.

Goal Impact: This project will impact the Quality of Life Goal by providing citizens with maintained and safe equipment and an enjoyable quality of recreation and leisure services.

Legal Considerations: The Law Department has approved the bonding resolution as to form.

Recommendations/Actions: It is recommended that the City Council 1) approve the Amended Bonding Resolution, 2) authorize initiation of the project, and 3) authorize all necessary signatures.

Attachment: Amended Bonding Resolution.

First Published in the Wichita Eagle on March 6, 2009

RESOLUTION NO. 09-061

A RESOLUTION AMENDING RESOLUTION NO. 08-509, AND AUTHORIZING THE ISSUANCE OF BONDS BY THE CITY OF WICHITA AT LARGE FOR IMPROVEMENTS AND/OR RENOVATIONS TO PARKS, PARK FACILITIES, RECREATION CENTERS, AND SPORTS COMPLEXES.

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF WICHITA, KANSAS;

SECTION 1: That the description of public improvements identified in Section 1 of Resolution No. 08-509, adopted November 4, 2008 is hereby amended to read as follows:

Labor, material, and equipment for improvement and/or renovations such as Edgemoor and Evergreen gym dividers, McAdams kitchen remodel, Osage Volleyball standards; Watson Park pony barn, train depot, pedal boats and train renovations; and new playground system at 33rd St. and Jackson (Edgebrook Park). Additional improvements included a portable sound system, audio and video electronics for the 11th Floor City Hall conference meeting room, replacement of various athletics venues scoreboard and bleachers; and replacement of drinking fountains, table and chairs, ice machines, picnic tables and benches at numerous sites.

SECTION 2: That the prior version of Section 1 of Resolution No. R-08-509 is hereby rescinded and replaced by the foregoing amended section.

SECTION 3: That this resolution shall take effect and be in force from and after its passage and publication once in the official city paper.

ADOPTED at Wichita, Kansas, this 3rd day of March, 2009.

CARL BREWER, MAYOR

ATTEST:

KAREN SUBLETT, CITY CLERK

(SEAL)

APPROVED AS TO FORM:

GARY REBENSTORF, DIRECTOR OF LAW

Agenda Item No. XII-8.

**City of Wichita
City Council Meeting
March 3, 2009**

TO: Mayor and City Council

SUBJECT: Asset Management Agreement

INITIATED BY: Department of Finance

AGENDA: Consent



Recommendation: Approve the agreement.

Background: On September 25, 2001, the City Council approved the purchase of the Hyatt Regency Wichita Hotel. The City became the sole owner of the Hyatt Regency Wichita and assumed responsibility for oversight over various operational and financial areas with respect to management of the Hyatt. Day-to-day management of the hotel is contracted to the Hyatt Hotel Corporation. To provide expert assistance in the oversight of hotel management activities, the City engaged the services of PKF Consulting to serve as the City's Hotel Asset Manager. The term of the PKF asset management contract expired at the end of 2007.

Analysis: Asset management is defined as the oversight of the long-term value of the hotel as a real estate entity, while maintaining the business value and profitability of the operations of the hotel. The asset manager is an agent of the hotel owner (the City) and provides a knowledgeable and experienced interface between the owner and the management company. The asset manager makes recommendations to the hotel owner concerning performance and improvements relative to the management of the hotel, capital budgets, the condition of the physical plant, financial reporting, monitoring of the contract compliance, and so on.

PKF Consulting of Houston, Texas has served as the City's principal advisor on its dealings respecting the Hyatt Regency Hotel, going back to the original market feasibility study and selection of the hotel developer and in completing the transfer of ownership. PKF has visited the property on a quarterly basis and met with hotel management personnel (and the City) to evaluate operations and progress with any changes, capital improvement projects, etc. and reviewed in detail the financial performance of the hotel.

PKF consulting is a national leader in the field of hospitality consulting services, with offices in most major cities in the U.S. and overseas. John Keeling is a senior vice president in charge of the Houston Office of PKF Consulting and has been involved in the Hyatt Regency Wichita project since its inception. Mr. Keeling and his firm have rendered valuable service as the City's Hotel Asset Manager. PKF has been involved in projects such as the room remodel as well as the promenade area connecting Century II.

Under the terms of the contract renewal, it is proposed that PKF will evaluate monthly operating and financial results, follow up with management to determine the reasons for material variances, visit the property on a quarterly basis and meet with hotel management personnel (and the City) to evaluate

operations and progress with any changes, capital improvement projects, etc. and annually will evaluate the Market Plan, Annual Plan and the Capital Budget. The proposed term of the renewed engagement of PKF consulting as the Hotel Asset Manger is for a two year term ending December 31, 2010.

Financial Considerations: The proposed compensation for on-going hotel asset management services from PKF Consulting are \$4,000 per month (beginning January 1, 2009) which results in annual charges of \$48,000, plus expenses at cost (no mark-up). There is an increase of \$1,000 per month from the prior contract. The source of funding of the City's hotel asset management costs will be from hotel operating cash flow.

Legal Considerations: The proposed agreement for hotel asset management services has been approved as to form by the Law Department.

Recommendations/Actions: It is recommended that the City Council approve the agreement for hotel asset management services with PKF Consulting and authorize necessary signatures.

Attachments:

PKF Consulting Asset Monitoring Service contract

Timing

Consulting services will be performed on a timely basis, noting the desire to improve property performance in the short run to improve the likelihood of third party investment or purchase and maximize cash flow. Either party may discontinue this engagement for any reason with 30 days written notice to the other party. Unless discontinued as above or otherwise adjusted as agreed to by both parties in writing, this engagement will end as of December 31, 2010.

Professional Fees

Consulting fees will be invoiced at a fixed rate of \$4,000 per month beginning with January 2009. All out-of-pocket expenses associated with these efforts will be invoiced without markup.

Invoices will be rendered every 30 days as the work progresses and are payable upon presentation. If you decide to discontinue the engagement for any reason, our fee will be based on a pro rata portion of the month's fee to the date of cancellation.

Limiting Conditions

We will not ascertain the legal and regulatory requirements applicable to this project, including state and local government regulations, permits and licenses. Further, no effort will be made to determine the possible effect on this project of present or future federal, state, or local legislation including environmental or ecological matters or interpretations thereof.

We will be required to rely on information furnished by other individuals or found in previously existing records and/or documents. Unless otherwise indicated, such information is presumed to be reliable. However, no warranty, either express or implied, is given for the accuracy of such information and PKF Consulting assumes no responsibility for information relied upon that is later found to have been inaccurate. We reserve the right to make such adjustments to the analyses, opinions and conclusions provided to you as may be required by consideration of additional data or more reliable data that may become available.

Any financial analyses we perform will be based on estimates, assumptions and other information developed from our research of the market, knowledge of the industry and meetings with property representatives during which we will be provided with certain information. Some assumptions inevitably will not materialize, and unanticipated events and circumstances may occur; therefore the actual financials results achieved during the period under consideration will vary from our estimates and the variations may be material. Improvements in property operating performance cannot be guaranteed.

Our role and responsibilities are limited and we shall not be responsible for the day-to-day management of the subject hotel, which will be the sole responsibility of Hyatt Hotels Corporation.

PKF Consulting, G. Randle McCaslin and John Keeling shall be indemnified per the attached indemnification and be additional insureds on all liability insurance policies

Ms. Kelly Carpenter
January 1, 2009
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related to the subject property and association entities for the duration of this engagement.

Acceptance of Proposal

Please sign and return the enclosed copy of this letter as authorization for us to proceed. We have enjoyed working with you and your associates to-date and we appreciate the opportunity to present this extension of services to you. We look forward to working with you and your team in your efforts to enhance the cash flow and protect the asset of the Hyatt Regency Wichita Hotel.

Very truly yours,

PKF Consulting

John M. Keeling
Senior Vice President

ACCEPTED BY:

Signature

Name Printed

Title

Date

City of Wichita
City Council Meeting
March 3, 2009

TO: Mayor and City Council

SUBJECT: Bus Advertising Sales and Service Agreement (All Districts)

INITIATED BY: Wichita Transit

AGENDA: Consent Agenda

Recommendation: Approve agreement.

Background: The City of Wichita/Wichita Transit, solicited bids through RFP #800105 for the sale of advertising services on Wichita Transit's bus and van vehicle fleet. On December 9, 2008, one proposal was received from Houck Motor Coach Advertising, Inc. (HMCA) of St. Paul, Minnesota. Houck Motor Coach Advertising, Inc. is the current contractor for these services to Wichita Transit.

Analysis: HMCA has been in the transit advertising business for over 80 years, specializing in markets similar to Wichita. HMCA is highly regarded throughout the transit industry and provides advertising services to other midwest cities, including Duluth Transit Authority, Omaha Metro Area Transit, Cedar Rapids Transit, Johnson County Kansas Transit, and Lincoln Star Tran. HMCA has developed ad sales for both local and large national companies, some of which include AT&T, State Farm, Pepsi, Coca Cola, Wendy's, Apple Computer, and Sprint/Nextel. Wichita Transit has been satisfied with the services provided under its current contract, and staff recommends that the contract for advertising services be continued with HMCA.

Financial Considerations: HMCA will pay WT a minimum guarantee of \$50,000.00 per year for three years, plus two additional option years based on a 50/50 split of net advertising revenues generated. In addition, 50 percent of net sales will be paid to WT that exceed the \$50,000.00 guarantee.

Goal Impact: This contract allows for WT to ensure the efficient use of city infrastructure by providing revenue to assist in maintaining safe and dependable transportation services.

Legal Considerations: Reviewed and approved as to form by city attorney's office.

Recommendations/Actions: It is recommended that the city council approve the contract with HMCA and authorize the necessary signatures to execute the contract.

Attachment: Agreement between Houck Motor Coach Advertising, Inc. and WT for advertising on buses and vans

AGREEMENT

THIS AGREEMENT made and entered into this 1st day of March, 2009.

BY AND BETWEEN

Houck Motor Coach Advertising, Inc.,
a Minnesota corporation,
hereinafter referred to as
“**CONCESSIONAIRE**”

AND

The City of Wichita, Kansas,
a Kansas municipal corporation,
hereinafter referred to as “**CITY**”

WITNESSETH: That

WHEREAS, CONCESSIONAIRE is engaged in the business of selling advertising in and on motor vehicles, and **CITY** is engaged in the transportation business in the City of Wichita, Kansas, and more specifically in the operation of a bus line.

NOW, THEREFORE, in consideration of the mutual promises and covenants hereinafter set forth, the parties hereto agree:

1. Subject to the conditions herein contained and provided, **CITY**, for itself, its successors and assigns, has let and by these presents does lease, give and grant unto **CONCESSIONAIRE** the sole and exclusive advertising rights and privileges in and on the interiors and exteriors of all of its buses now or hereafter owned, operated or controlled by the City of Wichita, Kansas, for and during a period of three (3) years commencing March 1, 2009, and terminating on March 1, 2012, with an option to renew for two (2) additional one (1)-year periods, and additional renewals as permitted by law, and by mutual agreement, unless written notice is given by either of the parties at least 30 days prior to the contract anniversary date. Notice by either party to the other party shall be as provided in paragraph 18.
2. **CONCESSIONAIRE** shall maintain sufficient sales representation in Wichita, Kansas, to assure sales of as high a level of space possible.
3. The parties hereto agree that the advertising rights and privileges herein granted to **CONCESSIONAIRE** in and on the buses are those inside spaces on the sides immediately below the ceilings upon which are affixed racks or moldings for advertising cards and for such other spaces and locations both inside and outside said vehicle as **CITY** may, from time to time by letter or other writing, designate and permit for such use in and on its buses.
4. All advertising frames on the buses owned by **CITY** are and shall remain the property of the **CITY**. The cost of replacement frames due to wear during the course of this agreement shall be shared equally by **CONCESSIONAIRE** and **CITY**. Said frames will be purchased by the **CITY**, and **CONCESSIONAIRE** agrees to make reimbursement to **CITY** of one-half the cost of such frames, including freight charges. The cost of installing, removing, or changing frames will be borne by the **CITY**.

5. In consideration of the exclusive advertising privileges granted herein, the CONCESSIONAIRE agrees to pay the CITY monthly during the term of this Agreement fifty percent (50%) of its total monthly gross receipts from the sale of all local and national advertising placed on the CITY's vehicles.

"Gross receipts" shall mean the total sums of money actually collected by CONCESSIONAIRE from advertisers for the display of advertising after payment of agency commissions, wherever applicable, which commission shall not exceed fifteen percent (15%) of the amount billed in each instance.

The CONCESSIONAIRE shall furnish to the Director of Transit of Wichita Transit, a CITY department, by the 20th day of the second and each succeeding month during, and the next month after expiration of this Agreement, CONCESSIONAIRE's payment for the preceding month accompanied by a verified statement of revenue and collections for said month, which statement shall include Advertiser, contract period, number and size of signs, billing, collections and unpaid balance for each contract.

CONCESSIONAIRE shall not be obligated to pay any rentals to the CITY during any month or months for advertising unsold advertising space, and shall not be responsible to CITY for the cancellation of any contract or lease by an advertiser.

The minimum amount ("Minimum Guarantee") which shall be paid by CONCESSIONAIRE to the CITY during each contract year during the term hereof shall be the sum \$50,000.00.

At the end of each six (6)-month period, effective beginning March 1, 2009, there shall be a semi-annual accounting covering the period March 1, 2009, through August 1, 2009, and an annual accounting covering the period March 1, 2009, through March 1, 2010, the purpose of which shall be to determine whether the minimum annual guarantee shall be applicable for that period. Should remittance to the CITY through any six-month period fall below fifty percent (50%) of the annual minimum guarantee, CONCESSIONAIRE shall remit to the CITY within 20 days of the end of the six-month period the difference between actual remittance and the required annual minimum guarantee.

6. The CONCESSIONAIRE agrees to furnish to the CITY, when requested, a report showing the standing and condition of all accounts concerning any advertising contract involving the vehicles of the CITY, and it is further agreed that the CITY shall have the right at all times during the term of this Agreement by any agent or agents it may select, to examine at its own expense, all contracts, books and records of the CONCESSIONAIRE concerning any advertising contract involving the buses of the CITY. The CITY shall furnish to the CONCESSIONAIRE upon request, information showing daily number of vehicles in operation each month and number of passengers carried daily each month.

CONCESSIONAIRE shall keep true and complete records and accounts of all gross revenue and business transacted, including bank deposits, and annually furnish a true and accurate statement of the preceding lease year, of all such gross revenue and business transacted during such preceding year, which statements shall be certified by an authorized representative of the CONCESSIONAIRE to be correct. Such annual statement shall include all gross revenue attributable to said lease year.

7. CONCESSIONAIRE shall furnish the Director of Transit of Wichita Transit, a CITY department, with a schedule of advertising rates and charges. Should the CONCESSIONAIRE deem it necessary to change the above rate schedule, then it will immediately notify the Director of Transit of this change.
8. CONCESSIONAIRE hereby further covenants that it will not at any time display any advertisements which would tend to disparage or discourage riding in any of CITY's buses or which are of a disreputable or otherwise objectionable character, and the CITY shall have the sole discretion to determine what is objectionable and shall have the right to remove such objectionable advertising.

9. The CONCESSIONAIRE shall at all times maintain advertising cards in a neat, clean and attractive condition to the best of its ability. The CITY shall, at all reasonable times, give the employees or agents of CONCESSIONAIRE free access to its facilities for the purpose of placing, changing or removing the aforesaid advertisements, signs or cards. CITY shall use reasonable care in protecting the property belonging to CONCESSIONAIRE.

The CITY shall make available to CONCESSIONAIRE, reasonable space for the CONCESSIONAIRE's work on its property in connection with its operations hereunder at no expense to CONCESSIONAIRE.

10. CONCESSIONAIRE agrees to secure and deliver to the CITY at the time of execution of this Agreement a Certificate of Insurance certifying insurance coverages as follows:

A. Comprehensive General Liability Covering Premises

Operations, xcu hazards when applicable, Product/Completed Operations, Broad Form Property Damage, and Contractual Liability with minimum limits as follows:

Bodily Injury Liability	\$500,000 Each Occurrence \$500,000 Each Aggregate
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Property Damage Liability	\$500,000 Each Occurrence \$500,000 each Aggregate
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or

Bodily Injury and Property Damage Liability (Combined Single Limit)	\$500,000 Each Occurrence \$500,000 Each Aggregate
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B. Comprehensive Automobile Liability

All Owned, Non-Owned, and Hired vehicles with minimum limits as follows:

Bodily Injury Liability	\$500,000 Each Accident
Property Damage Liability	\$500,000 Each Accident

or

Bodily Injury and Property Damage Liability (Combined Single Limit)	\$500,000 Each Accident
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C. Workers' Compensation

For minimum limits of:

Employers Liability	\$100,000 Each Accident
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In the Certificate of Insurance, the Insurance Company must state that the Contractual Liability includes the liability of the City of Wichita assumed by CONCESSIONAIRE in the Agreement. The Certificate shall also state that the CITY will be given written notice if the policy is renewed, cancelled or changed within ten (10) days prior to the effective date thereof:

11. The CONCESSIONAIRE hereby agrees to release and to indemnify, and hold harmless the City of Wichita and its officers, agents, and employees from and against any and all loss of, and damage to, property, or injuries to, or death of, any person or persons, including property and employees or agents of the City of Wichita, and shall defend, indemnify and hold harmless the City of Wichita, its

officers, agents, and employees, from any and all claims, damages, suits, costs, expense, liability, actions or proceedings of any kind or nature whatsoever, including Workmen's Compensation claims, of or by anyone whomsoever, in any way resulting from, or arising out of, directly or indirectly, its operations in connection herewith, the nature, character, photographs, drawing or language of any advertising displayed or removal thereof, and including acts and omissions of officers, employees, representatives, suppliers, invitees, contractors, and agents of the CONCESSIONAIRE. The minimum insurance requirements prescribed herein shall not be deemed to limit or define the obligation of the CONCESSIONAIRE hereunder.

12. In the event CONCESSIONAIRE is unable to sell any advertising space, or spaces, in or on said buses for any particular month or months during the life of this Agreement or any renewal thereof, CITY may use such space for its own purposes so long as it shall receive no compensation therefore. CONCESSIONAIRE shall, however, furnish cards for such personal charitable or civic use as CITY shall desire at the same prices it furnished such cards to other advertisers, but CITY reserves the right to obtain competitive bids should it so elect.
13. Notwithstanding the provision herein contained for the payment by the CONCESSIONAIRE to the CITY of sums based upon a percentage of gross receipts as above provided, it is expressly understood and agreed that the CITY shall not be construed or held to be a partner, associate, or joint venturer of the CONCESSIONAIRE in the conduct of its business, but the CONCESSIONAIRE shall at all times have the status of an independent contractor, without the right or authority to impose tort or contractual liability upon the CITY.
14. In the event that CONCESSIONAIRE shall default in making any of the payments herein required to be made by it as and when the same shall become due and payable and such default shall continue for ten (10) days after written demand for such payment; or if CONCESSIONAIRE shall default in the performance of any of its other covenants hereunder and such default shall continue for thirty (30) days after written demand for performance; or if CONCESSIONAIRE shall be adjudged a bankrupt or a receiver or trustee shall be appointed for CONCESSIONAIRE's property and such adjudication or appointment shall not be vacated within thirty (30) days; or if CONCESSIONAIRE shall become insolvent or make a general assignment for the benefit of creditors or file a voluntary petition in bankruptcy or for reorganization, the CITY may terminate this Agreement immediately and without further notice. In the event of any such termination, the CITY shall be entitled to receive all advertising rentals directly from advertisers, and CITY agrees to perform duties of CONCESSIONAIRE. CONCESSIONAIRE agrees to take whatever steps are necessary, including assignment of said advertising contracts to CITY or its designee.
15. The Minimum Guarantee referred to in Paragraph 6 shall be reduced pro rata in the event that on a quarterly basis the CITY either (i) reduces its scheduled service mileage in excess of twenty-five percent (25%); (ii) reduces the number of its in service fixed-route buses and paratransit vans in excess of twenty-five percent (25%); or (iii) reduces the number of spaces for signs on its buses and paratransit vans by more than ten percent (10%). For the purposes of this provision, quarterly total fixed-route bus service mileage as of December 31, 2007, is 361,164 miles per quarter. The total quarterly service miles for paratransit vans are 197,176 miles as of December 31, 2007. The CITY operates 37 fixed-route buses during peak service; these buses contain spaces for 111 signs. The CITY operates 16 paratransit vans during peak service; these vans contain spaces for 32 signs. In the event of such reduction, either party shall have the option to cancel this contract as of the close of any contract year by giving written notice at least three (3) months before the commencement of the next contract year.
16. This Agreement and all its terms, conditions and covenants and other provisions herein contained shall, according to their meaning and intent, be binding upon the parties hereto and upon their respective successors, assigns and legal representatives.

17. The CONCESSIONAIRE covenants and agrees not to assign, sublet, pledge, or transfer its rights in this Agreement, in whole or in part, nor grant any license or concession hereunder, without the prior written approval of the CITY.
18. No waiver of any provision of this Agreement on any occasion shall be deemed to be a waiver of such provision on any other occasion or a waiver of any other provision of this Agreement on any occasion.
19. All notices required to be given to the CITY hereunder shall be given by certified mail, return receipt requested, addressed to the Director of Transit, Wichita Transit, 777 E. Waterman, Wichita, Kansas, 67202-4615. All notices required to be given to the CONCESSIONAIRE hereunder shall be served personally or sent by certified mail, return receipt requested. The effective date of such service of any such notice shall be the date such notice is mailed or delivered to the CONCESSIONAIRE or Director of Transit as aforesaid.
20. The CONCESSIONAIRE, during the term of this Agreement, shall secure and maintain all required business licenses or permits required by the State of Kansas and the City of Wichita, including a license for vehicular advertising as required by Chapter 3.64 of the Wichita City Code.

WITNESS our hands and seals the date and year first above written.

ATTEST:

Houck Motor Coach Advertising, Inc.

By: _____
President
"CONCESSIONAIRE"

ATTEST:

The City of Wichita, Kansas

By: _____
Robert Layton
City Manager

APPROVED AS TO FORM:

Gary Rebenstorf, City Attorney
Law Department, City of Wichita

EXHIBIT A
REVISED NONDISCRIMINATION AND
EQUAL EMPLOYMENT OPPORTUNITY/AFFIRMATIVE ACTION PROGRAM
REQUIREMENTS STATEMENT FOR CONTRACTS OR AGREEMENTS

During the term of this contract, the contractor or subcontractor, vendor, or supplier of the City, by whatever term identified herein, shall comply with the following Nondiscrimination-Equal Employment Opportunity/Affirmative Action Program requirements:

- A. During the performance of this contract, the contractor, subcontractor, vendor, or supplier of the City, or any of its agencies, shall comply with all the provisions of the Civil Rights Act of 1964, as amended: The Equal Employment Opportunity Act of 1972; Presidential Executive orders 11246, 11375, 11131; Part 60 of Title 41 of the Code of Federal Regulations; the Age Discrimination in Employment Act of 1967; the Americans with Disabilities Act of 1990 and laws, regulations, or amendments as may be promulgated thereunder.
- B. Requirements of the State of Kansas:
 - 1. The contractor shall observe the provisions of the Kansas Act Against Discrimination (Kansas Statutes Annotated 44-1001, et seq.) and shall not discriminate against any person in the performance of work under the present contract because of race, religion, color, sex, disability, and age except where age is a bona fide occupational qualification, national origin, or ancestry;
 - 2. In all solicitations or advertisements for employees, the contractor shall include the phrase, "Equal Opportunity Employer" or a similar phrase to be approved by the Kansas Human Rights Commission;
 - 3. If the contractor fails to comply with the manner in which the contractor reports to the Kansas Human Rights Commission in accordance with the provisions of K.S.A. 1976 Supp. 44-1031, as amended, the contractor shall be deemed to have breached this contract, and it may be canceled, terminated, or suspended, in whole or in part, by the contracting agency;
 - 4. If the contractor is found guilty of a violation of the Kansas Act Against Discrimination under a decision or order of the Kansas Human Rights Commission, which has become final, the contractor shall be deemed to have breached the present contract, and it may be canceled, terminated, or suspended, in whole or in part, by the contracting agency;
 - 5. The contractor shall include the provisions of paragraphs 1 through 4, inclusive, of this subsection B in every subcontract or purchase so that such provisions will be binding upon such subcontractor or vendor.
- C. Requirements of the City of Wichita, Kansas, relating to Nondiscrimination-Equal Employment Opportunity/Affirmative Action Program requirements:
 - 1. The vendor, supplier, contractor, or subcontractor shall practice nondiscrimination-equal employment opportunity in all employment relations, including but not limited to, employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates or pay or other forms of compensation, and selection for training, including apprenticeship. The vendor, supplier, contractor, or subcontractor shall submit an Equal Employment Opportunity/Affirmative Action program, when required, to the Department of Finance of the City of Wichita, Kansas, in accordance with the guidelines established for review and evaluation;
 - 2. The vendor, supplier, contractor, or subcontractor will, in all solicitations or advertisements for employees placed by or on behalf of the vendor, supplier, contractor, or subcontractor, state that all qualified applicants will receive consideration for employment without regard to race, religion, color,

sex, “disability, and age, except where age is a bona fide occupational qualification,” national origin or ancestry. In all solicitations or advertisements for employees, the vendor, supplier, contractor, or subcontractor shall include the phrase, “Equal Opportunity Employer” or a similar phrase;

3. The vendor, supplier, contractor, or subcontractor will furnish all information and reports required by the Department of Finance of said City for the purpose of investigation to ascertain compliance with nondiscrimination-equal employment opportunity requirements. If the vendor, supplier, contractor, or subcontractor fails to comply with the manner in which he/she or it reports to the City in accordance with the provisions hereof, the vendor, supplier, contractor, or subcontractor shall be deemed to have breached the present contract, purchase order, or agreement, and it may be canceled, terminated, or suspended, in whole or in part, by the City or its agency, and further civil rights complaints or investigations may be referred to the state;
4. The vendor, supplier, contractor, or subcontractor shall include the provisions of subsections 1 through 3, inclusive, of this present section in every subcontract, subpurchase order, or subagreement so that such provisions will be binding upon each subcontractor, subvendor, or subsupplier.
5. If the contractor fails to comply with the manner in which the contractor reports to the Department of Finance as stated above, the contractor shall be deemed to have breached this contract, and it may be canceled, terminated, or suspended, in whole or in part, by the contracting agency.

D. Exempted from these requirements are:

1. Those contractors, subcontractors, vendors, or suppliers who have less than four (4) employees, whose contracts, purchase orders, or agreements cumulatively total less than \$5,000.00 during the fiscal year of said City, are exempt from any further Equal Employment Opportunity/Affirmative Action Program submittal.
2. Those vendors, suppliers, contractors, or subcontractors who have already complied with the provisions set forth in this section by reason of holding a contract with the federal government or contract involving federal funds, provided that such contractor, subcontractor, vendor, or supplier provides written notification of a compliance review and determination of an acceptable compliance posture within a preceding forty-five (45) day period from the federal agency involved.

Second Reading Ordinances for March 3, 2009 (first read on February 24, 2009)

PUD2008-00004 PUD #26 Parkstone Planned Unit Development Amendment #1 and zone change from B Multi-Family Residential (“B”) and MF-29 Multi-Family Residential (“MF-29”) to PUD Planned Unit Development (“PUD”), generally located north of Douglas Avenue, east of Hillside Avenue, south of First Street North, and more particularly located south of Victor Place and east of Rutan Avenue. (District II)

ORDINANCE NO. 48-193

An ordinance changing the zoning classifications or districts of certain lands located in the city of Wichita, Kansas, under the authority granted by the Wichita-Sedgwick County Unified Zoning Code, Section V-C, as adopted by Section 28.04.010, as amended.

SUB 2006-54-Plat of Stonebridge Commercial Addition located on the southeast corner of 37th Street North and Maize Road. (District V)

ORDINANCE NO. 48-194

An ordinance changing the zoning classifications or districts of certain lands located in the city of Wichita, Kansas, under the authority granted by the Wichita-Sedgwick County Unified Zoning Code, Section V-C, as adopted by Section 28.04.010, as amended

ORDINANCE NO. 48-195

An ordinance changing the zoning classifications or districts of certain lands located in the city of Wichita, Kansas, under the authority granted by the Wichita-Sedgwick County Unified Zoning Code, Section V-C, as adopted by Section 28.04.010, as amended.

SUB 2008-50-Plat of West Towne Industrial 2nd Addition located on the east side of Hoover Road and south of Kellogg. (District IV)

ORDINANCE NO. 48-196

An ordinance changing the zoning classifications or districts of certain lands located in the city of Wichita, Kansas, under the authority granted by the Wichita-Sedgwick County Unified Zoning Code, Section V-C, as adopted by section 28.04.010, as amended.

Sidewalk Repair Assessment Program. (Districts I, II, III, and VI)

ORDINANCE NO. 48-197

An ordinance making a special assessment to pay for the improvement of and providing a tax levy for the cost of construction of sidewalks in the city of Wichita, Kansas.